THE Public Interest

NUMBER 49, FALL 1977, PRICE: $3.00

ABOUT REGULATION

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Howard Margolis

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CONTENTS

About Regulation:		
I. The Politics of Auto Emissions	*Howard Margolis*	3
II. The Environmental-Impact Statement vs. the Real World	*Eugene Bardach & Lucian Pugliaresi*	22
III. Government Comes to the Workplace: An Assessment of OSHA	*Albert L. Nichols & Richard Zeckhauser*	39
The New Housing-Cost Problem	*Bernard J. Frieden*	70
"Child Care": The Fiscal Time Bomb	*B. Bruce-Briggs*	87
The False Dawn of the Sunset Laws	*Robert D. Behn*	103
Can Policy Research Help Policy?	*Martin Rein & Sheldon H. White*	119
Contributors		69

THE PUBLIC INTEREST is published quarterly by National Affairs, Inc., and appears in Spring, Summer, Autumn, and Winter issues. Its office of publication is located at 10 East 53 Street, New York, N.Y. 10022. Subscription price: $12.00 for one year; $24.00 for two years. Add $2.00 annually for Canadian and foreign subscriptions. Unsolicited material cannot be returned unless accompanied by sufficient return postage. Second class postage is paid at New York, N.Y., and at additional mailing offices. © 1977 by National Affairs, Inc.

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The politics of auto emissions

HOWARD MARGOLIS

THERE has been a distinctively "American way" of regulating automobile emissions. In December 1970, Congress wrote into the law very tough standards, to be met on a very tough time schedule, explicitly without regard for cost or technical feasibility. Once the standards took effect, the auto makers were to be fined up to $10,000 for each car produced not meeting the standards. This was known as "forcing technology" and "holding industry's feet to the fire."

Since "holding industry's feet to the fire" is guaranteed to produce cries of anguish, without guaranteeing that the desired technology will be forced to emerge, an escape clause was necessary. The details of the escape clause have varied from year to year. But through 1976, the basic scenario has remained unchanged: After a suitable period in which charges of bad faith and incompetence are exchanged among industry, environmentalists, Congressional committees, and the Environmental Protection Agency (E. P. A.), the standards are delayed once again. No one is happy with this outcome. To industry, it is a continuation of a disruptive and inefficient way of handling the problem. To environmentalists, it is an annual sellout to industry pressure. But each side prefers a standoff to a clear-cut victory for the other side.

This year things may have changed. How much so is not clear:

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As this is written, the legislation is still underway; and, in any event, much will depend on subsequent events. But even if the auto-emissions controversy were finally resolved this year, the question of how it has been dealt with would still be intriguing. Why have we gone through this cumbersome and (in the eyes of most non-American observers) quite bizarre procedure? Whose interests have really been well served? And if, as I believe, the answer is no one's, then how do we account for what has happened? What may fairly be called the conventional account of the situation goes like this:

1. The auto makers successfully resisted meaningful regulation of emissions until Congress, with the backing of an aroused public, finally passed strong legislation in late 1970.

2. The effects of the oil embargo in the fall of 1973, and subsequent economic difficulties and concern about fuel conservation, greatly strengthened the hand of industry in time to prevent full application of the 1970 legislation. Nevertheless, emissions standards are a lot tougher and the country is better off today than in the absence of the 1970 legislation.

3. Consequently, the difficulties in enforcing the law, whose passage represented a victory of the public interest over private interests, are to be understood as resulting from the power of the auto industry and from largely unforeseeable developments.

However, I will argue a quite different, though not at every point conflicting, case:

1. While it is hard to doubt that standards are (or at least eventually will be) tighter than if the 1970 legislation had never existed, in fact standards remain less stringent than those scheduled before the law was passed. And to the extent the standards are tougher, it is not clear that the public is better off as a result.

2. Although subsequent events were greatly influenced by the oil embargo, even if it had never occurred, there were sufficiently grave flaws in the 1970 legislation virtually to guarantee protracted controversy about implementing the law.

3. The flaws in the original legislation can be traced to a structural flaw in the policy process (what I will call the problem of "political externalities"), with implications well beyond the auto-emissions issue.

Reviewing the history

For the infant auto industry at the turn of the century—and indeed for a long time afterward—emissions were not an issue. From

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the beginning, the gasoline-powered internal-combustion engine had a more serious potential for emissions problems than most alternatives (e.g., steam), since the motive force came directly from the fuel-combustion chamber. The internal-combustion engine could therefore not be designed for low emissions without compromising performance and cost features more directly affecting the car owner. As the internal-combustion engine came to dominate the auto industry, the facilities and technology for its design, manufacture, and maintenance steadily grew. Only after a half-century did the issue arise whether, taking account of emissions, the internal-combustion engine was the best power plant for automobiles. It would be an overstatement to claim that the internal-combustion engine would *not* have been chosen had it been possible to foresee in 1929 what we knew in 1970. All we can flatly assert is that by the time questions were raised, a vast network had grown, reaching from the top management of the industry to the corner-garage mechanic, with a powerful and very understandable vested interest in the conventional internal-combustion engine.

The absence of prior concern meant that until significant pressure for controls began to develop in the 1960's, only incidental attention to emissions had gone into the design of internal-combustion engines. Major concern about emissions thus arose in the following mixed situation:

1. Substantial reductions (on the order of 60 percent) in hydrocarbon (HC) and carbon-monoxide (CO) emissions resulting from the incomplete burning of fuel were possible at very little cost—about $25 per car.

2. The situation was complicated by the need to control oxides of nitrogen (NO_x). NO_x results from heating the air during combustion, not from incomplete burning of the fuel, so that steps to decrease HC and CO often increase NO_x.

3. In any event, tighter standards become increasingly difficult and expensive at the margin; at some levels of emission control it would presumably be more efficient to change the basic technology of the industry than to try to meet the requirements. (Whether the Muskie standards for 1975 or the essentially identical Nixon standards for 1980 reach that point is in dispute. Both in 1970 and today, there are knowledgeable observers on both sides of the question.)

Model-year 1970 cars, which went on sale in the fall of 1969, met federal standards that reduced HC and CO emissions by about 60 percent. The "easy cleanup" strategy was thus already in force. Indeed, by the summer of 1970, when the Senate Subcommittee on

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Air and Water Pollution headed by Edmund Muskie began to write its bill, public policy had already moved well beyond this stage.

In February 1970, the Nixon Administration had proposed regulations for 1975 cars, extending controls to NO_x and also sharply tightening the existing standards for HC and CO. Moreover, goals for 1980 were published, and the Administration proposed federal funding to develop a new "clean-engine" technology by 1975. The Administration's proposals anticipated that stricter standards would be desirable for the 1980's, and that these standards might not realistically be met by the strategy openly preferred by industry leaders —the cleanup of the conventional engine.

But even before the Nixon program was formally announced, the president of General Motors had described the forthcoming emissions standards to the Society of Auto Engineers, claiming that the auto industry could meet them, provided the oil companies supplied gasoline that did not damage the emissions-control devices (for G.M., the catalytic converter) that industry planned to use. Since the oil companies were asserting at the same time that conversion to the new unleaded fuels would cost them (and eventually the public) around $5 billion, it would seem that the auto companies committed themselves to tight emissions controls in a most unambiguous way. Thus the companies' stated intent to meet much tighter standards became the basis for the Administration's proposal to control fuels, leaving the auto companies no basis for arguing against the installation of the control devices.

Against this background, consider the projected impact of various emissions standards and timetables. The figure on page 7 projects the effect of the Nixon Administration's proposals for 1975 and 1980 (as submitted to the Muskie subcommittee in May 1970). The chart is for HC, but for our purposes it can also be taken as representative of CO and NO_x as well. The bill produced by the Muskie subcommittee in August essentially moved the Nixon goals for 1980 ahead to 1975. Note that Curve B represents *both* the Nixon proposal for 1975 standards *and* the standards that actually turned out to be in effect in 1975 (and have since been extended at least through 1978). In other words, *the standards in effect today are approximately the standards for 1975 that the industry said it could and would meet before the new legislation produced by the Muskie subcommittee was ever conceived.* Since this may strike some readers as surprising, it is worth emphasizing that the point is in no way controversial. Everyone who has been close to the matter understands that this is how things have worked out.

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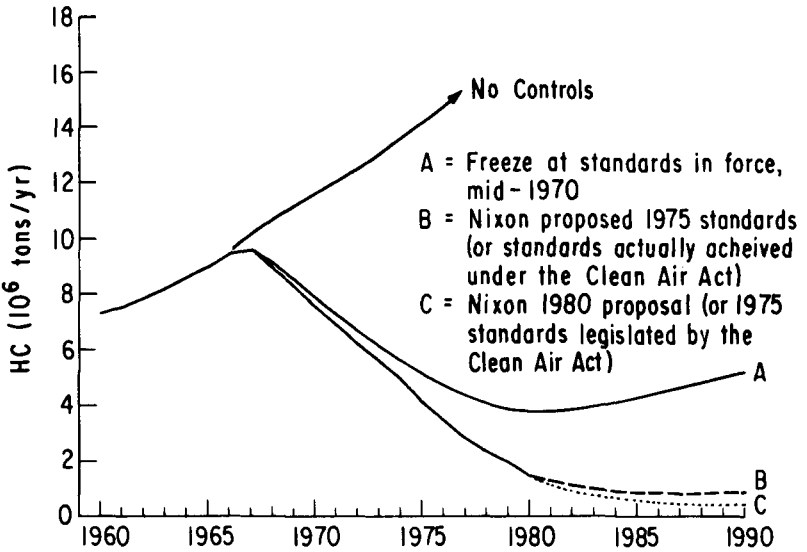
Projected Effects of Various Hydrocarbon-Emissions Standards[1]



[1] Source: *Legislative History of the Clean Air Amendments of 1970*, Vol. II, pp. 1083-1087.

Similarly, Curve C in the charts represents *both* Nixon goals for 1980 *and* the tougher program actually enacted. The standards are essentially the same for both, the only significant difference being that under the legislated program (the Muskie standards for 1975), the standards would come into effect five years earlier than under the Nixon proposal. The five-year speed-up makes little difference in the projections—so slight that we can let Curve C represent both programs. In fact, *throughout the 1970's, the main factor influencing aggregate emissions has been the gradual replacement of high-emission old cars (the average life of a car is 10 years) by relatively low-emission new cars.* The details of the standards—whether they reduce emissions by 90 percent or only, say, by 80 percent—make little difference.

In summary, although particular dates have taken on great symbolic importance, someone just looking at graphs to see the effects of changing the deadlines would wonder why such a fuss was being made. Nevertheless, the heart of the Muskie bill was the speed-up in the timetable for the standards.

The environmentalist crusade

At one point during the Congressional debate over the emissions-control program, the auto industry's sole defender (Senator Robert

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Griffin of Michigan) asked, "Does the Senator from Maine know what it would cost?" Muskie replied, "No. I said in my statement—I have not hidden anything—that our responsibility is to tell the industry what the public health requires."

How was it possible to justify such an intense commitment? In the mood of the moment, when cleaning up the environment had very much the character of a moral crusade, no analytical defense of the program seems to have been expected, and certainly none was offered. The important thing was to get clean air, and get it fast. This was defined as reducing auto emissions by 90 percent (from 1970 levels). It was the role of Congress to write into law the kind of strict controls the public was supposedly demanding; it was industry's task to get the job done.

Now, with some allowance for political rhetoric, it might be possible to frame a strict cost/benefit argument justifying such a position. For if the health risk to the public were sufficiently severe, it might be reasonable to put the whip to industry, push emissions down as rapidly as possible, and worry later about moving to better, and perhaps basically different, technology that could do the job more cheaply.

However, while such an argument could be made conceptually, there was no empirical justification for it. For the fact was—and is today—that *there is no solid scientific case that even totally eliminating auto emissions (possible only by totally eliminating automobiles) would have any detectable effect on the nation's health.* Nearly all the usually cited evidence of the striking effects of air pollution—the London "killer fogs," for example—have no connection with *automotive* pollutants. When pressed, the E. P. A. will come up with estimates of health damage resulting from auto emissions. But these are hedged by so many caveats, provisos, and qualifications that no one can claim they are anything better than a moderately informed guess.

So it was not at all surprising that the rationale of the program was framed in terms of moral imperatives presumed to transcend calculations of costs and benefits. In the process of sidestepping the question of whether the standards were worth their costs, other important questions were also ignored—notably, whether given the marginal effects of timetable changes, it made sense to impose deadlines so tight that the industry would have good reason to feel forced to do precisely what it openly preferred to do anyway, namely concentrate on fixing up the conventional engine rather than aggressively exploring major technological changes.

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But one need not look to anything so subtle to conclude that the program was inherently likely to be hard to implement. Consider how emissions are controlled in other countries:

1. Save only Japan (which has particularly acute pollution problems because of the density of its population and its high rate of economic activity, *and* which sells roughly half of its total automobile production to the United States), no country in the world has found it prudent to limit maximum emissions by standards within a factor of five of those in the United States.

2. No other country has taken the view that cost and technical feasibility are not to be considered in setting standards.

3. No other country has taken standards beyond demonstrated technical feasibility and known cost and frozen them into law (as opposed to regulation subject to administrative revision.)

4. No other country has based its policy on the scientific fiction that a zero-effects level of auto pollutants can be identified, or on the political fiction that the public should and will be willing to pay any cost to meet such standards.

5. Finally, in the United States all this was done without hearings at which affected parties and expert witnesses could comment on the proposal before it was fixed in law. The central features of the bill—for automobiles, the 90-percent reduction in emissions by 1975—emerged from the Senate committee months after hearings had been held on a far milder bill, under which auto-emissions standards would continue to be set administratively, with due regard for costs and technical feasibility.

Yet the program swept through Congress virtually without debate, to be warmly embraced by a business-oriented Administration, which claimed it as the response of Congress to the President's leadership on environmental matters.

The easy answer to this puzzling state of affairs is that in the crusading mood of 1970, anything carrying the environmentalist banner was politically sacred. But that answer is not really enough. For the fact is that the legislation is full of compromises. If the bill was so uncompromisingly tough, why does it require that cars meet its standards for only 50,000 miles, while the average life of a car is over 100,000 miles? There is, moreover, a certain amount of political naiveté in supposing that *any* bill would have swept through Congress without some attempt to fight it. The auto industry was not politically powerless, even in 1970, at the height of environmental concern. Given that the interests of auto dealers—who are politically significant in virtually every Congressional district—were much the

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same as those of the auto makers, the industry was not totally lacking the resources to mount a serious fight. Yet the support the industry was able (or chose) to muster in Congress was essentially limited to a single speech by Senator Griffin of Michigan. For three months after the initial draft was circulated in mid-August, the industry was sufficiently muted in its criticism of the bill that in mid-November, press stories noted a change of strategy when industry spokesmen began making some strong statements against the bill.

So there is a puzzle about why the legislation took the form it did. This cannot be resolved simply by noting that the public mood guaranteed (as indeed it did) some sort of strong new environmental legislation in 1970. That explains why there was a bill, but not why the particular bill, rather than some alternative, swept through Congress. Nor does such an account explain why the industry was so quiet in the face of legislation that appeared to threaten it with enormous penalties for failing to do what it asserted it did not know how to do.

Who got what

The bill that passed did so with little controversy because it provided each of the key groups—politicians, environmental activists, and the auto industry—with what it valued most within the range of outcomes consistent with the political realities of 1970. None of the difficulties described above received serious consideration because it was not in the interest of any of the groups to press any of the issues. Despite all the talk about the forcefulness and clarity of the bill, it was in fact ambiguous enough regarding its likely effects that all parties could hope for an acceptable outcome. Furthermore, if the general public (which would pay the bulk of the costs) grew disillusioned, everyone would have someone else to blame.

Among the politicians, the two principals were President Nixon and Senator Muskie, who at that time was expected to be the Democratic Presidential nominee in 1972 (particularly after the 1970 Congressional elections in November; the final emissions-control bill did not emerge from conference until December). Senator Muskie was Mr. Environment in Congress. Nixon had every incentive to try to seize the auto-pollution issue from him; Muskie in turn had every incentive to try to outdo whatever Nixon proposed. There is no need to deny either man a genuine interest in cleaning up the environment. But each also paid attention to his political interests. So a strong and, in hindsight, very sensible set of legislative proposals

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came from the President in February 1970; a still stronger bill came out of the Muskie subcommittee in August. (In the interval, there were several important events: in April, a massive nationwide demonstration, called "Earth Day"; in May, a stinging attack on Muskie's environmental record from a Ralph Nader study group; in July, a highly publicized air-pollution alert in Washington and other East Coast cities; and in August, the payment of $425,000 by G.M. to Nader to settle his invasion-of-privacy suit.) The President, and Republicans generally, declined the role of being against cleaning up the environment. No Republican voted against the bill. (On a technicality, even Senator Griffin withdrew his opposition.) Nixon then presided over an elaborate bill-signing ceremony, in celebration of the response to his environmental initiative.

For environmental activists, the basic politics of 1970 were even simpler. The stronger the commitment, the more clear-cut and ambitious the goals, and the more specific the deadlines, the better the bill would be. It was perhaps possible to go too far. But if compromises had to be made, from the environmentalist point of view, it was tempting to believe that they could best be made in future years, instead of failing to press for the strongest possible commitment while popular enthusiasm was at its height. In any event, it was entirely understandable and in the interest of maintaining their constituency for environmentalists to assume that if anything in the bill were demonstrably unsound, industry could be counted on to point it out: Industry neither needed nor deserved help from environmentalists on that score.

But what were industry's incentives? Suppose only that the auto makers exhibited the usual sort of policy preferences seen in all large, long-established organizations, from churches to armies. It might be expected that the auto industry would at first resist the idea that auto emissions were harmful. If emissions were judged harmful, auto makers would hope that a relatively cheap cleanup of the conventional engine would be an adequate response; if a drastic cleanup were unavoidable, they would look carefully for some technical "fix" that would accommodate it without requiring a basic change in technology; and, if a new technology had to be found, they would be anxious to avoid an obligation to make the change-over quickly. A minor cleanup would be a minor matter. Emissions could be reduced impressively with almost no effect on car prices. A major cleanup that was short of a drastic change in technology might be expensive enough that the resulting higher prices for cars would have a significant effect on the demand for cars. But the effects on

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profits or on return on investment would be too subtle to identify and measure clearly, and comparable in scale to the kinds of uncertainties and risks managers ordinarily live with. A gradual change in technology, without severe time pressure, might be a comparable problem.

But a forced change in technology presented risks on an entirely different scale—real nightmares for the industry. There would be large-scale disruptions that opened up some very unpleasant questions. If the government could force the abandonment of the conventional engine, might it not also insist on choosing the alternative technology? And would a political choice be biased towards "space-age" technology, without a real understanding of the practical difficulties of adapting very sophisticated technology to the skills of the corner-garage mechanic? Might political pressures and price elasticity combine to prevent industry from fully passing on the costs of a forced change in technology? What would happen if the government suddenly reversed itself concerning the proper course of action? What would happen to the independence of the industry if the weaker companies were unable to manage the change-over without public subsidies?

The auto makers' dilemma

Was it reasonable for the industry to worry about the possibility of a forced change in technology under severe time pressure? Perhaps it was. Consider some events of the first six months of 1970: The California state senate voted to ban the internal-combustion engine by 1975; legislation was proposed in both the House and the Senate to do the same nationwide; the President proposed a research effort to develop a nonpolluting engine by 1975; the Senate passed, with Administration support, a bill requiring the Federal government to pay premiums of up to 100 percent to purchase low-pollution cars (the bill was based explicitly on the premise that cleaning up the conventional engine was not an economical way to deal with auto pollution). Fifteen states joined in a petition to the Supreme Court to order the industry to undertake a radical cleanup.

A perusal of *The New York Times Index* for 1970 shows not only that the automobile was the focus of escalating concern about air pollution, but also that the industry's commitment to the internal-combustion engine was often perceived as the heart of the problem. As early as March 1970, the *Wall Street Journal* was reporting that although the industry was "bowing to the inevitable" and planned

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to meet the Nixon 1975 and 1980 standards "regardless of cost or effect on performance," nevertheless "Detroit wouldn't give up the internal-combustion engine without an enormous political and public-relations fight."

Meanwhile, the spectacular landings on the moon helped stimulate popular concern about "Spaceship Earth," and also made enormously appealing the notion of setting ambitious technological goals to be met according to an ambitious timetable. *The New York Times* was very much in the spirit of the moment when it editorialized, after the Muskie subcommittee reported its bill, that "a nation that can put a man on the moon in less than 10 years can clean up its engines in half that time."

Viewed against this record, the bill that emerged from the Muskie subcommittee in August 1970 was by no means the worst outcome for the auto makers. The bill merely demanded that industry do what it felt to be impossible. But there is a certain comfort in being asked for the impossible: You know you will not actually have to do it. And to the extent that the Muskie standards could in fact be approached, automobile owners, not the automobile industry, would have to pay the price. From the standpoint of the auto industry, writing Nixon's 1980 goals into law for 1975—a timetable that made it clearly impossible to push any alternative other than maximum cleanup of the internal-combustion engine—was clearly preferable to taking Nixon's 1975 goal of developing a nonpolluting engine as the basis for writing into law a commitment to replace the internal-combustion engine "within this decade."

The August Muskie draft was therefore a kind of Pandora's box for industry. There had not been so much as a single hour of hearings on the bill. Few people seem to have had any clear idea of what was in the legislation, beyond a general impression that the bill was tough and would force the auto industry to clean up by 1975. In an ordinary year, it certainly would have been an exceedingly vulnerable bill; even in the unusual circumstances of 1970, it was far from invulnerable. The bill required not only industry, but localities to take drastic actions at unknown costs to meet strict health standards whose basis was exceedingly fuzzy. All this was to be done according to a very tight timetable. (The deadlines for implementing local transportation plans were approximately the same as those imposed on the auto companies.)

Simply on the procedural ground that hearings should be held before passing such far-reaching legislation, the auto industry could have won some allies even among those otherwise wholly unsym-

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pathetic. Indeed, in the mood of the moment, the procedural issue was the only one on which the auto industry might reasonably have hoped for a sympathetic hearing. Pushing that issue might have bought time to make a concerted attack on the rigid standards and tight deadlines of the bill. So if the industry wanted to fight the bill openly, the place to start was on the procedural question. But the industry chose not to press the point. The only reference by industry to the lack of hearings was an unprotesting comment about "time schedules which did not permit open hearings on new and important provisions in Committee Print No. 1 [the draft bill]."

It becomes easier to understand this timidity on the part of the country's largest industry if we bear in mind that the bill could have been much worse from the viewpoint of the auto makers—and conceivably might have been if the issue had been thrown open by a major industry challenge. This might not have been a *likely* outcome, but only a few months earlier, the Muskie bill itself would have been regarded as wildly unlikely, even by Muskie himself, who sponsored far weaker legislation earlier in the session. Even a mildly risk-averse industry manager would have some doubts about the "unthinkability" of more explicitly anti-internal-combustion-engine legislation. (What actually happened was that after a bill was passed that "solved" the emissions problem by mandating a clean engine in five years, the clean-engine program was never funded even up to the inadequate levels proposed by the Nixon Administration.)

But the distinctly passive response of the auto makers to the draft legislation was less revealing than the distance the industry had already gone, months earlier, toward accepting as reasonable the kinds of standards Congress proposed to write into law. The *Wall Street Journal* article cited earlier reported that both G.M. and Ford already had running on their test tracks cars capable of meeting the Nixon standards for 1975. The president of G.M., in the January 1970 speech mentioned earlier, announced that G.M. had already demonstrated in its laboratories that the Nixon standards for 1980 could be met with the internal-combustion engine. In general, industry took a quite aggressively optimistic view of what could be done to clean up the conventional engine. It would be difficult to understand this eagerness to please in the absence of the growing pressure to phase out the conventional engine, which gave the industry some incentive to claim that it had technology close at hand to clean up the internal-combustion engine without changing its basic technology. That claim was made early in 1970, when no one in Washington was proposing to write the Nixon 1980 standards

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rigidly into law, much less under a sharply speeded-up timetable. But such statements by industry made it easy for Congressmen to believe that, with pressure, the auto makers might be able to deliver in five years what they had already promised to deliver in 10.

The policy trade-off

The Muskie bill was thus a good deal less arbitrary than it has often been portrayed. For all its strong language, the bill could be interpreted as intending merely to push the industry into moving as urgently as possible to meet standards that the industry itself had claimed it could meet, and planned to meet. Indeed, Senator Muskie repeatedly said as much during the debate:

> I think the industry has an obligation to try to meet [the standards] . . . *as one president of one auto company said, "You can't put this in* the record, but we are that close." If we are "that close" it seems to me we have to set the timetable and challenge them to meet it. They can always come back to Congress. . . . It is not necessary to say that any company is going to be closed on January 1, 1975. . . . Five years is a long time for the companies to make their effort, then to make their case, and then for Congress to consider a change of policy.

Five years later, Senator Muskie was saying to the auto-company presidents who had come to ask for a five-year extension of the standards:

> The fact is that insofar as the automobile is concerned, you are in no different position as the result of the passage of the Clean Air Act than you would have been if the Clean Air Act hadn't been passed. The standards you are now meeting, you agreed to meet in 1969. . . . I am frustrated, frankly. I ask that not in the sense of putting you on the spot. But how do we get this thing moving? How do we get it off the ground?

Now the transition from 1970 to 1975 was not so calm as these quotations might suggest; nor has it been calm since. But in late 1970, the most the auto companies could gain, even if they succeeded in killing the Muskie bill, would be a shift from a Congressional mandate to meet very tight standards (accompanied by repeated admissions that compliance might not be technically feasible and standards therefore might have to be relaxed) to a commitment to carry out their own claim that they could meet those standards on a more relaxed time schedule.

Yet the feasibility of meeting standards would depend a good deal on how they were *operationally* defined. The details of the regulations and even the details of how regulations were going to

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be administratively interpreted could have large effects on the feasibility of meeting the standards. For example, would field observations on real cars be fed back into the certification process? Or was certification to be based only on tests of prototype cars driven and maintained by the companies' own expert staffs, not by ordinary drivers and mechanics (as eventually proved to be the case, for the most part)? In this and a dozen other ways, the details of the legislation and its administration were of great importance to the companies. Moreover, it was much easier to influence politically such details than to change the basic standards and deadlines that had dominated public interest in the bill. Meanwhile, several of the key arguments against strict deadlines and rigid standards—particularly the possible costs and the difficulty of assuring that the controls would retain their effectiveness during the life of the car—were very much the kinds of arguments that could be turned against the industry by critics of the internal-combustion engine, or which could otherwise turn out to aggravate rather than help the industry case.

So there was a real trade-off between challenging the basic provisions of the bill (the standards and deadlines), which even if successful would have put the Congress and the Administration under great pressure to be tough on the details, and not fighting the standards while quietly asking for help with the details of implementation, in view of how tough the basic provisions were on the industry.

All things considered, it is not surprising that the industry chose the latter course. Although the auto makers did not get all they wanted, they got a great deal. The successive versions of the bill almost suggest that the environmentalists and industry were less in conflict about the substance of the bill than simply interested in different things. It is striking how much can be explained by the hypothesis that the environmentalists had a particular attachment to language symbolic of a commitment to environmental purity, while the industry was concerned with what the law would make them do. For instance, the law does not say that cars must comply with the standards only for the first 50,000 miles (or five years) of use, but rather that cars must conform "for their useful life." However, elsewhere in the bill, "useful life" is defined as what, in practice, is only half the useful life of the car.

The Senate version of the bill required all American cars to meet the American standards, even if they were not manufactured for use in this country. The final bill retains the Senate language requiring that cars for export meet the standards. But it adds an

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escape clause for countries of export with standards different from the United States. The report on the bill then defined such countries to include those with no standards at all. Thus the final bill included a provision requiring that cars for export meet the standards—but only in the event that they would be so required in the absence of that provision.

Another provision increased tenfold the penalty for producing a car that violated the standards (from $1,000 to $10,000). At $1,000 (effectively closer to $2,000 on the price of the car, since the penalty would not be deductible from corporate income tax), the fine was high enough for every practical purpose. But this provision of the bill offered something for both environmentalists interested in symbolic matters and auto makers interested in practical matters. At the $1,000 level, perhaps some purist would worry that plutocrats buying very expensive cars might indulge themselves in a "license to pollute." But it was also possible that with penalties of "up to" $1,000, fines could be prorated to the degree of compliance, thus putting the amounts within the range of the excise tax the industry had been able to live with for many years. (The excise tax was rescinded in 1971, less than a year after the tougher emissions standards were enacted.) In that case, the government could take a really tough stance on meeting standards, realistically demanding "comply or pay." But at the $10,000 level, fines were certain to be prohibitive. The alternatives to compliance would thus be either shutting down the country's largest industry, or relaxing the standards.

From this background and history of the 1970 bill, we can see reasonably well why the most serious questions about its soundness were never pressed by anyone. The politicians had no desire to say anything that might be interpreted as lacking in commitment in a year when environmentalist fervor was sweeping the land; the environmentalists themselves wanted the strongest possible commitments (with perhaps a certain amount of naiveté, or cynicism, revealed in the tendency to value rhetoric over substance); the auto companies, faced with the mood of the time, had less interest in questioning the intellectual foundations of the policy than in making it easier to live with. In the political climate of the moment, working quietly to soften details of the bill and ameliorate its administration could easily have looked more promising, particularly given the public commitments they had already made earlier in the year, than fighting the basic premises of the bill. On the record, that is the way it did look.

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What went wrong?

The 1970 legislation was based on a number of premises that were dubious on their face (e.g., that it was prudent to pass legislation dealing with a complex problem, which was certain to cost billions of dollars a year, without bothering to hold hearings) *or* that even a superficial examination of available information would have shown to be certifiably false (e.g., that the five-year speed-up in the application of the Nixon standards for 1980, which was the heart of the bill, would actually have some important effect on air quality). It is therefore hardly surprising that the subsequent history of the bill has been marked by frustration and bad feelings among all concerned. The details of these difficulties were not predictable, since they depended on future events, such as the oil embargo. But that an expensive program based on false premises would *somehow* run into difficulty is hardly surprising. Nevertheless, it is understandable that the bill passed in the form it did, since all the major parties did what was natural, and even rational, from their point of view.

This kind of political "rationality" explains not only the original legislation, but also the subsequent controversy over implementing (or the delay in implementing) the standards. We have a pluralistic political system in which no entity has full authority over policy and therefore no entity takes full responsibility for the soundness of public-policy choices. The various participants are constrained by the political power of their competitors, and all are constrained by the force we call "public opinion"—which all seek to influence, but none can predictably control. All thus regard "the best as the enemy of the good," and work to get a better outcome from their point of view. Uncertainties tend to be resolved so that the perceived conflict between what the participants do and what they ought to be doing is minimized. This process of agreeable simplification is facilitated by not doing the work (and it would require work) of assimilating facts and arguments that might prove incompatible with one's predictions.

The result of this process may be far from optimal. As in the case of emissions control, once enacted, the program becomes difficult to change. Social and organizational inertia favor its continuation. Highly visible aspects of the program may acquire symbolic or emotional significance, thereby raising the social cost of a retreat from those objectives. New vested interests are created that resist change—notably a bureaucracy dedicated to administering the law as it exists. Those who supported the legislation (in this case, vir-

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tually every member of Congress) are quite understandably reluctant to believe that the program may have been seriously misconceived.

If this were the whole story, one might be led to pessimism approaching despair over the prospects for dealing effectively with complex issues involving difficult trade-offs affecting large numbers of people. Yet such issues—currently the most salient is energy—are certain to be extremely important in the years ahead. The most troublesome aspect of the auto-emissions legislation is not the difficulties with the program, but the implication that there may be a systematic propensity of American government, with its emphasis on division of powers and on popular participation, to perform badly in dealing with precisely this sort of issue.

But a closer look at "what went wrong" with the legislation allows a somewhat more optimistic reading. The system does have the important capacity to learn—indeed, more so than may be immediately apparent, since political actors find it much easier to change the substance of policy than the rhetoric describing policy. The environmental issues dealt with in the early 1970's represented a new class of problems for federal regulation of businesses, with important differences from those dealt with in the past. The very novelty of the issues made it easy, even for those who felt they had spent a good deal of time working on the problem, to misjudge the substantive issues and the appropriateness and likely effects of various proposed remedies.

The *general* problem is that situations arise in which participants in a decision are erroneously taken to represent the full range of interests with an important stake in the decision. But since they do not, important considerations are omitted from the policy process because no one is adequately motivated to raise them.

In the case of auto emissions, the issue was almost entirely perceived as the auto industry versus the public interest in a cleaner environment. When the Muskie subcommittee completed its draft of the bill in mid-August, it was not made public, but was circulated privately to the auto companies (and to those industries affected by other portions of the bill). The subcommittee knew that the environmentalists were happy with the bill; it therefore wanted to be sure that "the other side" had its say. But since "the other side" was not going to pay for the costs of meeting the standards—that burden would fall on the public—the auto makers made only perfunctory objections to the features of the bill involving the greatest costs, and concentrated their efforts on improving the bill

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from the point of view of the industry. In other words, the auto companies invested their political capital in minimizing the likely cost *to industry*, not the total cost, most of which could be passed on to the public.

The problem of "political externalities"

The underlying structural difficulty is the political analogue of the economic problem of externalities (a connection that may be worth stressing since problems with political externalities are peculiarly likely to arise in situations involving important economic externalities). With this in mind the auto-emissions legislation can be understood as follows:

Government must act to control auto emissions (and environmental pollutants generally) because the harmful effects attributable to any single car user (or individual user of anything whose production or use creates pollution) are extremely inconsequential. Significant auto pollution is due to the combined effects of very large numbers of automobiles. So the individual driver has little motivation to consider emissions controls as something worth paying for. He cannot *see* any effect of a cleaner engine on his own car's exhaust, much less detect any drop in the total level of pollution in his community. So the pollution from his car is an "external" cost —as economists use the term, a real cost that the individual is not adequately motivated to take into account when deciding how to spend his resources.

Since the consumer is only weakly motivated to take into account the costs of pollution, the firm making what the consumer buys is also weakly motivated. For it profits by providing the consumer with what he is willing to pay for. The result is a social dilemma in which individual consumers and individual firms have no adequate incentive to take pollution costs into account, although all may have a joint interest in having everyone do so. The solution to this dilemma is to have an agreement that each will do his share, on the condition that everyone else also does so. The mechanism for arranging this social agreement is the passage of a law.

The reason a political analogue of this dilemma arises especially easily when economic externalities are at issue is that it will almost always be very inefficient—in fact, most often totally impractical—to have the law aimed at individual buyers. The number of firms making a product will be very small compared to the number of buyers of the product, so it is easier to regulate the producers

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rather than the consumers (or provide incentives, by some sort of tax scheme). It is also generally, though not always, politically easier to regulate the producers. So the direct interests in the legislation (or the regulations coming out of an administrative proceeding, or the lawsuits that shape policy) become the environmental interests versus the producer interests. The consumer interest is not directly involved, and since it is diffuse and usually unorganized, it is hard to activate unless the legislative proposal is quite bluntly aimed at individuals.

The net effect is that an important externality may arise that is political, rather than economic, in origin. In the case of auto emissions, the environmentalists perceived their role as maximally improving the environment; if industry had perceived its interest as minimizing total costs, then out of this clash of competing interests some reasonable social balance might have arisen. But industry's interest was not to minimize total social costs, but to minimize those costs it was forced to bear—many of which are not even economic in nature, such as sheer distaste for dealing with government bureaucrats or being forced to do what appears foolish and offensive to the businessman's ethic of efficiency. (For both environmentalists and businessmen, one should not underestimate the power of ideological commitments—to cleanliness for its own sake among the environmentalists, to efficiency and freedom from outside interference among businessmen.)

So we have a structural flaw in which rational behavior by individual actors leads to a socially perverse outcome. This is not inevitable: On many issues, the clash of the directly involved interests produces a reasonable result. Most of us would like to believe that the American political system generally works this way. But more and more evidence accumulates (especially involving regulatory agencies) that political externalities are a significant problem. And they are not easy to deal with.

It is not clear how institutional arrangements could be altered to create a new actor in the policy process with the role of advocate for socially important considerations that would otherwise be ignored. It is not clear how such an actor could be operationally defined, or how it would attain enough power to become an important factor, since others would naturally resist anything that dilutes their own power. It is likely that new institutional arrangements will evolve sooner or later, but not likely that a reform that is workable all at once can be designed. The starting point is to recognize the problem.

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The environmental-impact statement vs. the real world

EUGENE BARDACH & LUCIAN PUGLIARESI

ON December 30, 1974, Judge Thomas A. Flannery, of the United States District Court in Washington, D.C., issued a memorandum opinion and judgment requiring the Bureau of Land Management (B.L.M.) to prepare environmental-impact statements (EIS's) on the Federal government's livestock-grazing program. Flannery's opinion was a clear victory for the plaintiff, the Natural Resources Defense Council (N.R.D.C.), agreeing with its motion that B.L.M. should be required to examine the environmental effects of livestock grazing on specific areas of the public domain. The judge also required that N.R.D.C. and B.L.M. confer and try to agree upon a schedule for completing the EIS's.

Six months later B.L.M. agreed to prepare, by 1988, 212 EIS's covering 150 million acres of public domain. The proposed actions under consideration in the EIS's are capital investments for Western rangelands, such as fencing, water holes, and other improvements. The total cost of these EIS's is expected to exceed $100 million (an amount equal to 10 times the annual budget for the investments themselves during an average year in the early 1970's.) For over 20 years and without much success, B.L.M. has been trying to get funds to rehabilitate Western rangelands; in recent years it has obtained some budgetary increases for the range program.

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Unfortunately for B.L.M., Judge Flannery's decision means a considerable amount of these budgetary resources must be used to prepare EIS's. Although some of the work in preparing the EIS's may prove useful in making final decisions on capital investments, much of the work will have only limited utility. As far as B.L.M. is concerned, Judge Flannery's decision was bad news.

For many Federal government officials, EIS's, which were mandated by section 102(2)(c) of the National Environmental Policy Act of 1970 (NEPA), have been bad news indeed. Alleged failure to produce an EIS or an "adequate" EIS has been the basis for many a legal suit. As of June 30, 1975, there had been approximately 332 suits against Federal agencies, and another 322 suits were still pending. Of the completed cases, 64 had been sustained by the courts, and the defendant agency was obliged either to prepare a new EIS or to remedy an existing one. These court opinions have also set standards for the preparation of future EIS's, and the victories have substantially enhanced the power of environmental groups.

There can be no doubt that a major effect of the EIS requirement has been to give environmental groups a legal and political instrument to cancel, delay, or modify development projects that they oppose. Although the Council on Environmental Quality (C.E.Q.) seeks to minimize the political aspects of the EIS by noting that some 95 percent of draft EIS's escaped legal challenge during this period,[1] the fears of Federal agencies concerning judicial intervention have been a powerful bargaining tool. Whether the effect of both actual and threatened litigation under NEPA has been salutary on balance is impossible to judge. If it were possible in principle to decide "objectively" whether a project were justified, we could balance the benefits of having stopped or delayed unjustifiable projects against the costs of having done the same to justifiable projects. (We could also add to the benefits the improvements in design that took place in all projects, whether justifiable or not.) But such an "objective" assessment is very difficult in most cases and impossible in some. And even if the assessment were possible in principle, it would entail a massive research effort to assess independently each of the projects that had been affected by court action or the threat of it.

The legal and political effects of the EIS requirement were not, of

[1] Council on Environmental Quality, *Environmental Impact Statements: An Analysis of Six Years Experience by 70 Federal Agencies* (Washington, D.C., Government Printing Office, March 1976), pp. 31-32.

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course, those that Congress intended. In principle, preparation of an EIS was supposed to force Federal government officials to consider the harmful environmental consequences that might attend a proposed "major Federal action" like building a dam or developing an offshore oil field or constructing a housing project. The EIS was intended as an "action-forcing" instrument, that is, a document that might demonstrate to all interested parties that the agency was in fact doing the mandated environmental analysis. In the first NEPA-related opinion to come down from the United States Supreme Court, Congressional intent was interpreted as attempting to insure that the agency take "a 'hard look' at environmental consequences" (*Kleppe v. Sierra Club*). We agree that "a hard look" is what Congress intended and what the agencies ought to deliver. It is dubious, however, that the EIS process has succeeded in this objective, or that it can succeed as long as it continues to be used as an instrument of legal and political warfare. That it has guaranteed *some* sort of look at environmental issues is probable. But this is not the same as "a hard look." Indeed, the legal and institutional machinery that insures *some* look, inadvertently—and most unfortunately—precludes the *hard* look that could and should influence agency decisions. To put the case very baldly: Agencies cannot be penetrating or creative when their analyses are directed and mobilized for primarily defensive purposes.[2]

Our own experience with EIS's has primarily been with statements prepared by the Department of Interior in connection with its oil, gas, coal, and hard-minerals leasing activities. Hence our conclusions may not be generalizable to other agencies and other development issues, e.g., highway-route selection. However, we suspect our diagnosis is valid for those cases—however large or small a proportion of the total they might be—in which the preparing agency regards the EIS as primarily and essentially a defensive activity.

A second possible bias in our analysis derives from our own past positions in the bureaucracy. When we worked in the Office of Policy Analysis in the Interior Department, we were often assigned

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[2] There is a voluminous legal literature on NEPA and the EIS process. None of it, however, addresses our central question: How, if at all, does the EIS aid policy analysis? A considerably smaller literature, produced mainly by political scientists, does pose this question. (See, for instance, the "Symposium on Environmental Impact Statements" in *Natural Resources Journal,* April 1976, and references cited therein.) But nowhere in this literature have we found an acceptable normative conception of "policy analysis" against which the EIS contribution can be measured.

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the task of preparing for the Secretary decision memoranda delineating the significant trade-offs between development benefits and environmental costs. We therefore had a large stake in the analytic quality of the EIS documents themselves and of the attendant public hearings, internal departmental reviews, and comments received from other government agencies and private groups. The higher the quality of the EIS process, the easier it made our own work. Perhaps this personal stake in how the process works has made us overly sensitive to its shortcomings and insufficiently appreciative of its strengths.

The blurring of focus

The EIS's we have worked with have all been very bulky documents. The EIS on the December 1976 oil-and-gas-lease sale in the Gulf of Alaska contained 1,140 pages of typed, double-spaced text, exclusive of comments. The EIS for the October 1976 lease sale off the shore of Southern California ran to 1,650 pages. A January 1975 decision to approve four coal-mining plans in the eastern Powder River Basin of Wyoming was preceded by a five-volume, 1,980-page EIS. The March 1976 EIS on the Kaiparowits power proposal, a coal-fired electric power plant and transmission-line system in southern Utah, ran over 2,500 pages. Most of this material is not worth reading. Over half of it, for instance, is typically a minute and highly technical "description of the environment." There is always a chapter entitled "Irreversible and Irretrievable Commitment of Resources," which dutifully informs the reader that fossil-fuel resources consumed today are not available tomorrow. A chapter on "Alternatives to the Proposed Action" characteristically compares the fuel in question—oil or coal, say—to "conservation" plus a host of other energy sources, including tar sands, nuclear power, and geothermal steam, even though the Department of Interior has no control whatsoever over most of these alternatives.

There are several sound defensive reasons for all this apparent waste. NEPA and subsequent guidelines issued by C.E.Q. on how to prepare EIS's called for a number of topics to be addressed. The Interior Department signals compliance by translating these topics into chapter titles. Each chapter is then filled out with a respectable number of pages, the more the better, because sheer size is a way of trying to convince courts and other onlookers that the EIS process is being taken seriously. (Early NEPA suits often alleged insufficient comprehensiveness, so the department learned to prefer

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errors of commission to errors of omission.) Finally, the courts held in 1972 (*N.R.D.C. v. Morton*) that all reasonable alternatives had to be considered, no matter how remote from the agency's direct control. This has been read in the Interior Department to require the discussion not only of alternatives beyond its control but of quite fanciful ones as well, like windmills and organic waste.

On the surface, this may seem a reasonable approach. After all, why should the Secretary of the Interior allow someone to build a coal-fired electric plant if people can heat their homes with solar energy, and who is to say that some combination of alternative energy sources, each one of which was negligible by itself, might not be a substitute for some amount of coal or oil or gas? However, the case for a private development would be made if the developed resource would produce net social benefits (even after subtracting environmental costs). It is not really necessary to show that the resource in question is the *least* costly, or the contemplated use the *most* beneficial, unless there is some danger that the proposed development would displace or preclude these superior alternatives. To require more would imply that the Secretary of the Interior should engage in national economic planning on a grand scale. How is the Secretary to know whether denying a power-plant proposal will result in more conservation in the market area, less growth, a change in migration and industry location, or development of a more (or less) efficient plant with a better or worse set of environmental problems somewhere else? This is not a rationale for approving every development proposal that comes up, of course, but merely an indication of the hazards of taking the analysis beyond an estimate of net social benefits. But the courts have held that a broad spectrum of alternatives must be considered, and the department has understandably been reluctant to advance a theory as to why certain "alternatives" should not be regarded as genuine "alternatives" at all.

To be sure, the fact that much of an EIS consists of trivia or pure formalities makes its sheer mass less disconcerting than it might otherwise be. An experienced reader of EIS's knows what to ignore. Yet the residue is also large. For instance, Chapter III of the Gulf of Alaska EIS, "Environmental Impacts of the Proposed Action," is the only chapter of real significance—but it is 550 pages long. It discusses trivial issues, like the possible reduction of photosynthesis in terrestrial vegetation on the north gulf coast in the event of an oil spill at an onshore terminal, alongside truly alarming issues like the possible "severe depletion" of wintering water-

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fowl species and colonial nesting seabirds during certain seasons. Of the impacts discussed in Chapter III, the only serious ones were biological, and they were covered in 115 pages, or just one fifth of the chapter. The biological issues serious enough to warrant discussion in the decision document forwarded to the Secretary were covered in only 30 of the 115 pages.

The EIS has no method of locating the serious issues for the reader. In the worst traditions of bureaucracy and technocracy, the EIS appears in a very elaborate standardized format that simply drops the issues where it finds them. In the Alaska EIS, potential hazards to waterfowl appear in Section III.C.2.c-d. Seismic conditions in the Gulf of Alaska that might increase the risks of oil spills appear 125 pages earlier, in Section III.A.6. The difficulties of oil-spill cleanup and containment that might be posed by storms and high seas show up 400 pages later, in Section IV.C. This would seem to call for a reasonable executive summary, but the standard form of summary used by the Interior Department is not reasonable. It is brief and undiscriminating and therefore uninformative. And there is a reason for this: To highlight the "critical" environmental issues in a summary section (or elsewhere in the EIS) would necessarily imply that others were not so critical. The solicitor's office worries that such judgments are "conclusory" and in violation of NEPA.

Even if such judgments were not legally suspect on their face, they would certainly be open to challenge because of their subjectivity. No matter that subjectivity is the handmaiden of thoughtfulness and intelligence. In the legal and political context of the EIS process, subjectivity means trouble. The program bureaus (like B.L.M.) that prepare the EIS's do not wish to get the department in trouble. Staff scientists working on the EIS's do not wish to get their bureaus or themselves in trouble. Neither do the departmental reviewers (Interior has a 21-person office of centralized environmental program review whose main mission is to exercise quality control over EIS's produced by the bureaus) wish to cause trouble. Environmentalist critics believe that EIS's are turgid and undiscriminating because bureaucrats wish to camouflage the critical issues. Perhaps this is sometimes true. But the more severe problem is the opposite one: the reluctance to downgrade the noncritical issues.

The routinization and bureaucratization of the EIS process has an even worse effect than obscuring issues: Sometimes the EIS misses them altogether. Resource extraction and development proj-

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ects pose environmental problems that become quite familiar to veteran EIS writers and reviewers. Informal as well as formal "standard operating procedures" within the department direct scientific attention to well-marked intellectual grooves. This means that little energy is left for "anomalies" specific to a given region or area. The EIS on a phosphate lease in the Ocala National Forest, for instance, treated "the proposed action" as "mining" and thereby completely missed the possibility of radioactive wastes leaking into the Florida aquifer.

Institutionalizing pessimism

A great fear of environmentalists concerned with the integrity of the EIS process is that "command influence" at the top of an agency might cause scientific and technical experts at the working level to understate the true impacts of a development. This fear is not unreasonable, of course; but in our experience the reverse problem appears to be more common. The typical EIS in the Interior Department tends to create a mood of pessimism about the possible impacts even while ostensibly maintaining a neutral tone. This pessimistic mood is caused to a very large degree by the scientific diffidence of the EIS preparers, who are quite self-conscious about "how little we really know."

Usually the diffidence concerns estimates of magnitude and scale. Often the qualitative effects of a hypothetically damaging event or condition are reasonably well understood, but the scale of the damage and its significance are not. In such cases, the qualitative description usually has an alarming ring, which is not dampened by statements that convincingly describe the quantitative limitation of the likely damage. The result might be unduly to sensitize the reader to the problem. Consider the following extract from the Alaska EIS:

> Lights on onshore facilities and offshore platforms and vessels will attract birds and extensive use could potentially result in the death of many birds by collisions with such structures. . . . Birds which forage at night will be most susceptible to colliding with platforms and vessels. . . . This impact is not expected to adversely affect these bird species significantly; however, it will contribute to an ever increasing attrition of seabird populations in the northern gulf.

Although there is a good deal of beating around the bush, what remains in the end is the prospect of "ever increasing attrition." While veteran EIS readers would tend to discount somewhat the

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emotional impact of the phrase (largely on the grounds that if "ever increasing attrition" were truly serious the EIS writers would have said more about it), a less experienced audience might not.[3]

A useful analytic technique in dealing with uncertainty is to construct hypothetical scenarios. It is inevitable that "worst-case" scenarios tend to dominate such efforts. The scenario writer spends the most time on them because, in addition to being serious, they tend to be both complicated and interesting. For instance, the Alaska EIS notes:

> A serious adverse impact on birds would be a decrease of food organisms by oil pollution. . . . Various elements in the food chain are eliminated by chemical and physical properties of the oil, or items of the diet may be unavailable by being overlaid or embedded in tarry materials. The use of important feeding grounds has declined greatly after pollution by oil. . . . Upwards of 20 million shorebirds, which rely upon the intertidal zones for feeding, may find them blanketed with oil.

They "may" indeed—but then again they "may not." It would take a large and uncontrolled spill to do this much damage. Such a spill is of course a possibility, a "worst-case" possibility. The EIS does not make this clear, however.

We are not sure exactly what harm follows from a preoccupation, whether unconscious or conscious, with "worst-case" assumptions. But if it has been so harmful on past occasions in composing our military-defense posture, could it be more benign in the case of environmental defense?

Perhaps the most fundamental source of institutionalized pessimism in the EIS is the asymmetry of penalties resulting from error. "Too little" pessimism can lead to charges of "whitewashing" the proposed development and a court order requiring the department to go back and prepare an "adequate" EIS. No one, however, fears that an EIS will be charged with "tarring" a proposed development and will be held inadequate because it evinces "too much" pessimism. Many environmentalists would of course argue that pessimism in estimating environmental damages is exactly what is needed. We disagree: Realism will do. Genuine and serious environmental problems are sufficiently numerous without crowding the political agenda with imagined ones as well.

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[3] Of course, we do not know how serious the problem really is, any more than do the EIS writers. But a reader is forced to interpret the text as implying *something*, and, further, to appraise the validity of the implication independently.

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What is an "impact"?

The NEPA legislation is not clear as to what ought to be regarded as an "impact." Environmental-impact statements do tend to rely on an implicit theory of "impacts," however, which construes as an impact any alteration in the state of the world that might be caused by a given project. The concept of an "alteration in the state of the world" is not straightforward, of course. What it means depends in large measure on beliefs about what the world might look like in the absence of the project. The simplest and most legally and politically defensible belief is that the world would in no way look different than at present. Unfortunately, this view, no matter how convenient, is most unrealistic. There is constant change in human and natural environments all around us, but this endemic change is ordinarily not contemplated by the EIS. Nor does it ordinarily take into account how people, or other organisms, will adapt to change.

The Alaska EIS, for example, notes that oil development will possibly disrupt the annual migration pattern of salmon on which Eskimos in the interior depend for their subsistence. It describes the relationship between fish and people as "fragile." But is it? Are the Eskimo natives used to coping with occasional, or perhaps even frequent, fluctuations in the salmon catch? What substitute foods are available in the short run? In the long run, could the villagers move to another location? Do they in fact count on relocating from time to time? Perhaps the "impact" on these villages would in fact be as disruptive as the EIS implies, but the contextual information that bears on the issue is missing. To characterize a habitual relationship as "fragile" is simply misleading.

An EIS on coal development in the Eastern Powder River Basin of Wyoming refers to the decline of "hunting quality" as a result of "a long-run impact on wildlife populations and habitats." But the EIS also alludes to two ways hunters and landowners might adapt to development: Private landowners could specialize in stocking game animals and could charge fees to hunters; and if they did not want to pay the fees, hunters could also travel to the nearby mountains. (State or county game wardens could also shorten the hunting season or lower the bag limits.) Hence the correct focus for the EIS should not have been on "hunting quality" but on hunters. They had been hunting free of charge, but in the future they might have to pay. How much? How much additional travel time would be required for them to reach the next-best hunting areas? Although "residents have been very reluctant to

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pay hunting fees," says the EIS, how long will this reluctance last? In any case, should reluctance be counted an "impact"?

The Powder River EIS also laments that coal development in the area "has already impacted land tenure." By this is meant that some parcels have been removed from agricultural use and that some land has switched from individual to corporate ownership. It is not at all clear, however, why these changes should be counted as "impacts," even if they do represent departures from some putative long-run stable social state. The EIS also notes that ranchers who sell out to coal companies "will have to buy comparable property elsewhere, get by with less acreage in their operation, arrange a lease and repurchase agreement, or get out of the ranching business entirely." The fact that the coal companies often *pay* the ranchers for their land is almost overlooked. When they do not purchase the land outright they are responsible to the surface owner for damages caused by prospecting and mining operations. Yet there is no information on the crucial questions of whether payments for damages have been, or might be expected to be, "fair."

Costs and causes

Even when there is agreement that there will be an adverse effect on certain individuals or groups no matter how resourceful their adaptive strategies, there is still a nice semantic question as to whether this should be called an "impact." It is important to distinguish, at least conceptually, between the array of adversities that modern social life imposes on people in the normal course of things and extraordinary "impacts" that are more akin to catastrophes and natural disasters. When demographic shifts disrupt old neighborhoods, or increasing raw-material costs force a factory to close, or prices sag on the New York Stock Exchange, people are hurt, but no government agency is charged with writing an "impact" assessment. To put a finer point on the matter, if the coal, oil, and gas that become the subject for EIS's were held privately instead of publicly, the costs of social change attending their development would probably be ignored by the Federal government. In fact, it is only an accident of history that these resources are not now in private hands, since most similar resources in this country are in fact held privately.

Lessening the costs for groups who happen to find themselves covered by EIS's can mean increasing the costs to groups who do not. The EIS process in effect leads to unequal protection of the

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laws: What is for some people merely private "trouble" is for others an officially defined "impact" subject to some degree of special consideration. Perhaps this is good, on balance, and all of us should be able to redefine our private troubles as public dilemmas. We are not prepared to argue the issue. We only wish to point out that this is what happens as a result of the EIS requirement and its reliance on a very loose definition of "impact."

The EIS definition of "impact" also employs a simplistic notion of causation. The authors of the NEPA statute and of the subsequent C.E.Q. guidelines on EIS preparation were concerned that impacts that might eventually be "induced" by a project should not be ignored. For example, extending a sewer line into an undeveloped area has virtually no impact by itself but creates the potential for later development and associated impacts. But many contingencies can intervene between the "potential" impact and its subsequent realization, probably the most important being regulatory action taken by state and local governments. Consider the problem of refinery construction and siting discussed at length in a draft version of the EIS on "accelerated leasing" for outer-continental-shelf oil and gas. Now it is no simple matter to build a refinery. State and local officials are intimately involved in the process of granting zoning variances, issuing permits of many kinds, and negotiating agreements with local tax assessors. Obviously, they can and do modify or delay construction plans. Indeed, the six New England states have almost no indigenous refining capacity even today, precisely because local opposition has consistently defeated proposals to build such facilities. Yet the draft EIS assumed considerable new construction "induced" by outer-continental-shelf oil.

In the case of the EIS on offshore oil and gas leasing in the mid-Atlantic, the EIS erred in exactly the opposite way. It assumed all oil and gas from the area would be transported by pipelines, which are environmentally safer than shipment by tanker, to processing facilities in the adjacent states. It did not consider the possibility that these states might refuse to accept the onshore facilities and would thereby induce the additional environmental hazard of an increase in oil-tanker traffic. This defect in the mid-Atlantic EIS escaped our notice, as well as the notice of all other parties who reviewed it, including state and local officials and environmentalists. It was first mentioned by Federal District Court Judge Jack Weinstein, who used it as the basis for enjoining the Interior Department from holding the proposed lease sale.

The question whether an "impact" that might eventually be "in-

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duced" will actually occur or will be precluded has an important philosophical side as well. How should responsibility for relatively localized activities—both negative and positive "impacts"—be allocated among the different levels of government? The EIS normally presupposes a rather simple world in which an active Federal agency confronts a relatively powerless citizenry governed by relatively unimaginative and ineffective state and local institutions. How commonly this situation—or its opposite—occurs is an interesting empirical question. It is rarely discussed with any candor in an EIS, however, for obvious political reasons. If the typical EIS presupposition is correct in any given case, then of course a Federal action creates an "impact." But if the opposite is true, the same Federal action creates at worst a "problem" and at best an opportunity.

The price of "independence"

If EIS writers participate in designing a development project, they might have a stake in getting it approved. To avoid political and possibly legal charges that the EIS writers have been coopted, the Interior Department has adopted the strategy of isolating them from the whole design process. Thus the project designers, both in the bureaucracy and in the companies bidding for development rights, lose a potentially valuable source of technical assistance. And the EIS writers are rendered unable, except circumspectly and tentatively, to propose design features to mitigate certain environmental impacts. They do not, after all, know much about the engineering or economic aspects of these proposed features, and they are not given the chance to learn. One of the most significant predicted impacts of offshore oil and gas development in Southern California, for example, was aesthetic degradation of the seascape by production platforms. The EIS in this case contemplated certain camouflage measures: The structures could be painted or screened; water sprays from atop the platforms could reflect sunlight to cause the platforms to disappear from view; or mirrors could be placed on the platforms to reflect the ocean for onshore viewers. The EIS disingenuously stated that these measures had not "as yet" been developed and evaluated sufficiently to propose their implementation. No doubt the EIS writers hoped that someone would pick up these ideas and evaluate them. But they had not been charged with the task, nor had they grounds for believing anyone else had been assigned it.

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Authors of the Alaska EIS adopted the novel strategy of producing and publishing what they referred to as "uncommitted" proposals for investigation. One of the most interesting was to require boats and aircraft servicing offshore oil and gas facilities to stay at least one mile from all sea-bird colonies and marine-mammal rookeries. The EIS excused itself for not evaluating this and other measures more closely on the grounds that their implementation was beyond the leasing agency's legal authority. This may or may not have been strictly true. Much more to the point, however, the EIS preparers had no *bureaucratic* mandate to work out these mitigating measures with relevant parties elsewhere in Interior, in the larger Federal establishment, or in the private sector. Publishing a section on "uncommitted" measures was a bureaucratic cry for help, not a reflection of official thinking or policy.

Even if the EIS writers, by whatever unorthodox and unofficial means, could thoroughly evaluate their "uncommitted" mitigating measures, the published EIS would not contain the analysis. The reason is that the Interior Department does not wish the EIS to have the appearance of a "balanced" document, lest environmental critics allege in a lawsuit that the balancing was incompetent or prejudicial to environmental interests. For this reason, among others, the department has customarily followed the procedure of excluding all but the most sotto voce references to prospective benefits in the project impact statement.[4] For this reason, too, the department excludes a discussion of the potential costs and benefits of mitigating measures not yet officially adopted. Perhaps the potential benefits of such measures could be discussed, but discussion of the costs would be carefully avoided.

This failure of the EIS document to register such information when it is in fact known can mean that it is irretrievably lost to the decision process. Although the EIS writers might carry much useful information around in their heads that they could not put on paper, they are not likely to be consulted. The bureaucracy holds that "there are doers and reviewers" and severely downgrades the status of the latter. Being an EIS writer is therefore a low-status position. Capable people avoid the assignment or stay in that line of work

[4] The Interior Department is one of the few agencies in the Federal government that chooses to exclude benefit estimates from its EIS's. In addition to the reason cited in the text, we suspect a more important one: The Bureau of Reclamation, an Interior agency, oversees a great number of water projects, the costs of which far exceed the benefits on narrow economic grounds. Neither the Congress nor the Bureau wants this fact publicized any more than is necessary.

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as briefly as possible. As one young marine biologist told us, "The reward for writing a good EIS is worse than a punishment—they'll ask you to write another EIS!"

In sum, then, the technicians who work on the EIS have neither the access to analytical resources nor the bureaucratic standing to promote mitigating measures that might usefully be incorporated into the project design. This is the price of protecting them—and their legally reviewable work product—from real and imagined bureaucratic contamination.

Stereotyping the environmentalists

The EIS document is only the most visible feature of an underlying social process whereby environmental values are identified, articulated, and advocated. While this process does insure that the decision maker will be apprised of at least some of the environmental issues surrounding a project, it also insures that he will treat them with considerably more disdain than they usually deserve. Environmental interests have managed to acquire a negative image in many circles (which may or may not be justified), and the EIS process as it is seen by the decision maker strongly reinforces the stereotype.

The main problem is that environmental critics of the draft EIS, which under C.E.Q. guidelines is subject to public review in open hearings, are more interested in making a record for a possible legal case (and in stimulating adverse publicity) than in making constructive comments. They troop to the witness table, one after another, to denounce the EIS as "scandalously inadequate," "ludicrously misleading," and so on. Written comments often have the same tone. The opening paragraph of the voluminous critique of the Alaska EIS jointly prepared by the Natural Resources Defense Council and the Environmental Defense Fund called the EIS "gravely deficient" and "simply useless for decision-making purposes"; it even went so far as to allege, quite without any foundation in fact, that "the statement fails even to describe the outer-continental-shelf technology which it assumes will be utilized. . . ." It should not be surprising, of course, that environmentalist critics thus exploit the opportunities for harassment and legal delay that NEPA provides. Nor should it be surprising that Federal officials grow frustrated and stereotype all environmentalist critics as unreasonable troublemakers.

Through the same vehicle of public hearings and comments, en-

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vironmentalists also get stereotyped as parochial and narrowly self-serving. This occurs because any local interest that wants to oppose a development project, for any reason whatsoever, finds it convenient to dress itself in environmentalist clothing. Like most people, Federal agency decision makers like to think of themselves as doing good, as acting "in the public interest," and too often this seems to imply "standing firm" against selfish localism. Environmental critics at the local level imagine that they are ignored because the Federal government is a mindless Moloch. We suspect the larger truth is that NEPA has created a situation in which Federal bureaucrats consider it a public duty to ignore their pleas. (Of course, we do not mean that their pleas are always ignored. In fact, given the typical climate of mutual hostility in which Federal and local representatives so often meet, there is sometimes, we have been told, a surprising amount of cooperation. This normally goes on in secret, so that the cooperators will not be thought by their colleagues to be "selling out.")

The negative stereotype of environmentalist critics is transferred to environmental defenders inside the agencies as well. Lest they aggravate their already serious status problems, EIS writers are particularly careful to keep an observable distance between themselves and outside environmentalists (which is often misinterpreted as part of a larger plot to exclude "the public"). For example, the Fish and Wildlife Service, a bureau within the Interior Department, embarked a few years ago on a plan to make itself into the department's leading source of environmental analysis and expertise, but it has been seriously hurt by persisting doubt about the direction of its loyalties.

An anachronistic mechanism

As we said at the outset, the very features of the EIS process that insured that agencies would take *some* look at environmental issues have also insured that they do not take a *hard* look. These features are all traceable to the fact that the EIS process exposes the preparing agency to a good deal of legal harassment. Some look is probably better than no look, and it is very likely that many agencies, including the Interior Department, are doing a better job of protecting the environment today than they were in the dark ages before NEPA. Yet, it is precisely because the EIS concept has accomplished so much that it may be time to consider some changes in how it is prepared and used. It was important that agencies de-

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velop the institutional capacity to do environmental analysis and establish certain bureaucratic routines for at least glancing at enviromental issues. Although only a careful agency-by-agency review would reveal the truth, we suspect that these tasks have been successfully completed throughout most of the Federal government. We also suspect that, as with Interior, the EIS process actually gets in the way of taking a "hard look" at environmental problems for most agencies.

For this reason, we believe serious consideration should be given to the idea of making agencies relatively immune from legal proceedings on the grounds of alleged defects in the analytic contents or style of their environmental-impact statements. We suggest this because we believe this will permit those preparing EIS's to make them shorter, sharper, and more responsive to the key environmental issues each Federal project poses.

Whether Congress could legislate this relative immunity from judicial intervention we do not know, though we are reasonably sure that conscientious lawyers should be able to come up with a useable legal formula. Environmental-impact statements should still be prepared and they should be subject to public review and criticism, much as they are now. But without the constant threat of legal proceedings hovering in the background, the public debate over the statement's contents would be more intelligent, more candid, and more honorable, as would be the contents of the statement itself.

If EIS's are granted this immunity, there is of course no guarantee that these benefits will come to pass, but at least some of the conditions that presently inhibit them would be removed. As to the danger that agencies will backslide without the legal pressure of NEPA section 102(2)(c), we are not particularly concerned. Bureaucratic pressure from within the agencies, combined with political pressure from outside, should be an adequate substitute for legal pressure. Congress can always restore the status quo ante, and the threat of such a move would deter most Federal agencies from the most serious derelictions. In any case, any agency that would backslide very far is probably not an agency that is living up to NEPA even in its present form.

Even though we think our proposal would serve environmental interests, we do not really expect it to be embraced by environmentalists in the near future. They would have to sacrifice a much-used tool of litigation in exchange for an opportunity to engage in a more serious dialogue over real issues. They are by no means

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assured a triumphant outcome from such a dialogue. But they should ask themselves how much actual environmental protection has been achieved in the past by NEPA-based litigation and how much actual environmental protection has been sacrificed in the past by the failure of the EIS process to produce the desired "hard look" at environmental issues. If our reading of the past is more or less correct, and if the past is a not unreasonable guide to the future, environmentalist skeptics might see our proposal in a more favorable light.

In any case, environmentalists are not necessarily the main constituency for our proposal. Important business interests have chafed under the present EIS requirements of NEPA and would be happy to see them modified. The same is true of many Federal agencies. Our proposal should also be favored by that odd patchwork coalition of liberals and conservatives now pushing for broad-gauged "regulatory reform." It should certainly appeal as well to anyone interested in preserving the legitimacy of the courts and of judges in the American constitutional system. The Court of Appeals for the District of Columbia, for example, has been flirting with the idea that "the duty to plan comprehensively can be imposed on the government" and performance of that duty can subsequently be enforced by judicial review of the EIS filed under the comprehensive plan (*Sierra Club v. Morton*). Such a duty arises, in the court's view, from NEPA section 101(a), declaring it Federal policy "to use all practicable means . . . to improve and coordinate Federal plans, functions, programs, and resources" in order to protect the environment. That the courts could enforce "coordination" of public agencies better than Presidents is unlikely, of course; we would prefer that they not be tempted by the instruments seemingly furnished by NEPA.

Finally, we would expect to find in our camp those interested in restoring not only reason but reasonableness to the way government goes about its business. Four years ago the Federal Trade Commission commenced proceedings to require the large oil companies to divest themselves of their refineries and pipelines. In March 1977, Exxon filed a motion in Federal district court to halt the proceedings until the F.T.C. has prepared an environmental-impact statement. Whether Exxon's maneuver will ultimately prove successful is still in doubt. But when the multinational oil companies begin to find some use for the EIS requirements of NEPA, there is reason to think that the rules of the game have become thoroughly unreasonable.

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Government comes to the workplace: an assessment of OSHA

ALBERT L. NICHOLS & RICHARD ZECKHAUSER

CONGRESS passed the Occupational Safety and Health Act (OSHAct) of 1970 in order "to assure so far as possible every working man and woman in the nation safe and healthful working conditions." Performance has fallen far short of ambition. Indeed, OSHA (Occupational Safety and Health Administration), the agency created by executive order to enforce the OSHAct, has become a prominent symbol of misguided Federal regulation. It accomplishes little for occupational safety and health, yet imposes significant economic costs. As we shall argue, OSHA's failings to date should not be surprising since it focused on the wrong problem, safety on the job instead of occupational health, and then employed the wrong tool, direct regulation rather than an incentive approach.[1]

The problem the OSHAct confronted was significant. Each year, according to National Safety Council estimates made in 1970, more than 14,000 workers died on the job, and another 2.2 million suffered disabling injuries. Data on occupational illnesses were far

[1] For extensive references, supporting data, and recommendations concerning specific aspects of the performance of OSHA, see Richard Zeckhauser and Albert Nichols, "The Occupational Safety and Health Administration: An Overview," in *The Study on Federal Regulation of the Senate Committee on Governmental Affairs,* Vol. 6 (95th Congress, First Session).

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less reliable, since official statistics recorded only a small fraction of actual cases, but potentially much more disturbing. Extrapolation from one study cited in Congressional reports suggested that 390,000 cases of occupational illness were incurred each year, resulting in as many as 100,000 fatalities annually.

Supporters of the OSHAct stressed not only the toll, but also what the House Committee on Education and Labor called the "on-the-job health and safety crisis." Injury rates had reversed their long-term downward trend and had been rising since the mid-1950's. From 1960 to 1970, for example, the rate of accidents in manufacturing rose 26.7 percent, an increase explained only in part by cyclical economic factors and the changing composition of the labor force. Identifying this problem as a crisis, however, created the impression that swift action was essential and would yield major improvements. It has not; the crisis was exaggerated from the start. (In the same decade, the number of workdays lost to injuries and accidental deaths held steady in manufacturing, and the death rate from accidents continued to decline.) Moreover, the hastily adopted methods of the OSHAct failed to confront, or indeed recognize, the underlying economic forces that generate workplace losses.

Prior to passage of the OSHAct, Federal health and safety rules covered a limited number of workers, including Federal employees, miners, longshoremen, and workers employed under certain Federal contracts. Each of the states also regulated occupational safety and health, but state laws varied widely in their stringency and coverage, and many were enforced only weakly. Annual expenditures ranged from $2.70 per worker in some states to less than $.01 in others. Enthusiasts of regulation, using the measure of statutes and number of inspectors, found the situation among the states highly unsatisfactory. But there was no evidence that workers in states with tighter standards or higher expenditures enjoyed safer or healthier working conditions.

In addition to regulatory efforts, all of the states had workmen's compensation laws to provide for medical expenses and for partial replacement of lost wages due to occupational injuries and illnesses. In 1970, the year that the OSHAct was passed, workmen's compensation cost employers $4.9 billion. Many critics charged, however, that most state laws were deeply flawed. This allegation was supported by the findings of the National Commission on State Workmen's Compensation Laws, a temporary body created by the OSHAct itself. The Commission noted in 1972 that only 22 of the

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50 states met even half of the criteria suggested by the Labor Department. Its recommendations included the extension of coverage to all workers, increased benefit levels, removal of dollar and time limits on compensation, and fuller coverage of occupational diseases.

Few Congressmen appear to have questioned the need for Federal intervention in the area of occupational safety and health. At the time, there was marked Congressional enthusiasm for Federal protective regulation. (In a brief period around 1970, Congress also passed regulatory legislation on coal-mine health and safety, air pollution, consumer-product safety, and automobile safety.) Most Congressmen, and even the unenthusiastic Nixon Administration, accepted uncritically the idea that intervention should take the form of direct regulation of hazardous working conditions. Controversy centered instead on secondary issues, primarily where to lodge the authority for setting standards. The Administration favored an independent commission, but organized labor and Congressional Democrats ultimately prevailed in putting the Secretary of Labor in charge. The unions, smarting under charges that they were too willing to tolerate health and safety hazards in exchange for higher wages, pushed hard for a tough bill that would defuse the pressure on them to take a harder negotiating line.

OSHA is responsible, either directly or through its supervision of state programs, for the health and safety of about 60 million workers employed in roughly five million workplaces.[2] OSHA's primary activity has been the promulgation and enforcement, through on-site inspections, of several thousand standards covering the physical conditions of workplaces. Most of these specify, often in great detail, the required physical characteristics of plants and equipment. The standards now overwhelmingly concern safety rather than health problems, although efforts are being made to redress this imbalance.

Since its creation in 1971, OSHA has grown steadily; it is now second in size only to the Environmental Protection Agency among Federal regulatory agencies. It has authorization to staff over 2,700

[2] Fewer than half the states have secured Labor Department approval to run their own safety and health programs. The primary requirements for such approval, which carries with it 50-percent Federal funding, are that the standards be "at least as effective" as OSHA's and that adequate funding and staffing be provided for their enforcement. The future of state participation is uncertain. Initially all but five of the states sought permission to run their own plans, but tight budgets and organized labor's bitter opposition to state-run programs led many to withdraw—including some that had already secured approval, most notably New York.

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positions. Its impact on the American economy is far greater than its fiscal 1977 budget of $130 million might suggest, since its own expenditures are small compared to what it requires private firms to spend.

Despite the optimism with which the agency was launched, few are happy with OSHA's performance. Both politically and practically it has been a failure. It has generated fierce antagonism in the business community and is viewed by many as the quintessential government intrusion. And it has had virtually no noticeable impact on work-related injuries and illnesses.

In fact, most of OSHA's failings were predictable. However, they were not foreseen because 1) no attempt was made to analyze the problem of occupational safety and health in terms of likely causes and cures; 2) economic costs, a major consequence of any regulatory effort, were systematically excluded from deliberations; and 3) serious consideration was not given to any approach other than direct regulation. At the outset, Congress and those who pushed for OSHA, principally the unions and activists such as Ralph Nader, should have asked some fundamental questions: Was government intervention necessary, and if so, what form should it take? Who should determine levels of occupational safety and health? What levels are appropriate? What actually determines levels of occupational safety and health? Politically oriented groups like those that brought OSHA into being are unlikely to ask such questions. But the failure to raise them has already proved costly with OSHA. It is likely to prove many times more wasteful as the agency intensifies its efforts in the area of occupational health, a much more complex and consequential undertaking than safety regulation.

The labor market

Levels of safety and health in the workplace are determined by the decisions and actions of both workers and employers. To understand how, it is useful first to consider the hypothetical world of perfectly competitive labor markets. Accidents and illnesses impose economic costs on workers (lost wages and the expenses of medical care) as well as nonpecuniary costs such as pain and suffering, anxiety, and the tragedy of premature death. To attract workers to employment exposing them to risks, employers must pay premiums above ordinary compensation for otherwise equivalent work. Wage premiums for hazardous work are then the driving force that determines levels of health and safety in competitive

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markets. In addition to compensating workers for accepting risks, such premiums provide incentives for firms to improve health and safety levels as a means of reducing their wage costs. The outcome is efficient: The firm minimizes the sum of the costs of preventing accidents and illnesses and the cost of wage premiums for hazardous work, as would the workers if they owned the firm.

Although economic theory has long recognized the role of wage premiums for hazardous work in determining levels of health and safety, empirical studies have appeared only recently. The most widely cited study estimated that to accept an additional one-in-1,000 risk of death, workers require an extra $136 to $260 per year. A complementary investigation showed that workers who rate their jobs as dangerous or unhealthy receive about $375 extra per year.[3] Studies such as these suggest that workers are at least partially aware of the risks they run, and that, as economic theory predicts, market forces do lead to higher wages for workers in risky professions. They do not tell us how accurately workers assess risks —particularly the risks associated with particular jobs, as opposed to occupations or industries—nor do they tell us whether the premiums received are at the appropriate level.

But several factors prevent the labor market from fully achieving efficient outcomes, and thus provide possible arguments for government intervention. There are two classes of labor-market imperfections: imperfect information and externalities.

1. *Imperfect information:* The model of the perfectly competitive market assumes that workers and employers possess the information needed to make decisions about levels of occupational safety and health. That is, they know what the risks are and the costs of technologies for reducing them. For this to be true, the information must be available, it must be transmitted to the affected parties, and individual workers and firms must be able to understand it.

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[3] The first study, "The Value of Saving a Life: Evidence from the Labor Market," by Richard Thaler and Sherwin Rosen, in Nester E. Terleckyj (ed.), *Studies in Income and Wealth,* Vol. 40 (New York, National Bureau of Economic Research), may well underestimate wage premiums, since it covered only high-risk occupations. W. Kip Viscusi examined the role of worker perception of risks as part of his Ph.D. dissertation at Harvard, *Employment Hazards: An Investigation of Market Performance* (1976). Other studies include one by Robert Smith, *The Occupational Safety and Health Act* (Washington, D.C., American Enterprise Institute, 1976), which yielded estimated wage premiums almost 10 times greater than Thaler and Rosen's. In contrast, James Chelius, "The Control of Industrial Accidents: Economic Theory and Empirical Evidence," *Law and Contemporary Problems,* 38 (1974), pp. 700-729, was unable to find any premiums for risk.

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Problems arise at each of these three stages. First, the data relating occupational conditions to health and safety outcomes are poor. No individual or firm has sufficient incentives to tabulate such data or to conduct research on ways to reduce hazards, for the individual or firm would bear all of the cost yet reap only a small portion of the benefits. Without government participation, too little information will be generated on the causes of workplace losses and the means to prevent them.

Even if relevant information were provided, however, workers and firms might find it hard to make informed decisions. Experimental and empirical evidence suggests that individuals have considerable difficulty processing information about small probabilities, which are a critical characteristic of most occupational safety and health risks. Thus it may be valid to argue that the government should make certain decisions for workers and firms that they could correctly make for themselves only if they devoted considerable time and effort to acquiring and understanding information.

Health risks may be considerably more difficult for an individual to estimate than the risks of an accident, since health losses may not show up for many years. Moreover, it may be impossible then to establish that employment caused the health loss if the illness could have had other causes. For example, even the most observant workers would probably fail to notice that working with substance X raises by one percentage point the risk of lung cancer 20 years later. Thus inadequate information is a stronger argument for government intervention in health than in safety.

2. *Externalities:* If the competitive market is to work efficiently, only the worker and his employer should be affected by the level of safety and health provided him. If the welfare of others is involved, then externalities exist, and unhindered market processes will not result in efficient outcomes.

The primary externality in the case of workplace safety and health is financial, arising out of current institutional arrangements. Society cares for and compensates individuals who are sick or injured, including those who suffer an occupational illness or disability. Life-insurance benefits, health-care costs, and the expense of supporting a family whose wage earner is ill or deceased are borne only in small part by the workers whose health is impaired, or by his employer. Government-provided insurance, including Social Security and welfare payments, is not experience-rated. That is, employers who impose higher costs on the insurance fund by permitting unhealthful working conditions are charged nothing

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extra for their negligence, nor are workers who take risky jobs. Moreover, our whole medical-care system is laced with governmental subsidies. When a worker gets sick, the rest of society, directly or indirectly, foots a substantial portion of the bill through taxes. Even private insurance schemes, such as an employer's health-benefits program, are far from fully experience-rated. If some form of comprehensive health-care coverage were enacted under a national health insurance plan, these financial externalities would become both more direct and substantially larger in scope.

Workmen's compensation was originally viewed in part as a way of giving employers incentives to provide greater safety. In fact, however, only the largest firms are fully experience-rated (or, equivalently, self-insured). For small and medium-sized firms, most of the cost of workmen's compensation is unrelated to the firm's own safety record. Few cases of illness result in any payment of workmen's compensation.

Given these financial externalities, individual workers and firms do not bear the full cost of accidents and illnesses, and hence settle on inefficiently low levels of occupational safety and health. Governmental intervention to promote occupational safety and health thus can be viewed as an attempt to correct the distorted incentives created by income-transfer policies and by government and private health-and-disability insurance plans.[4]

The mere identification of an externality, however, does not provide a sufficient basis for supporting government intervention. We must measure the magnitude of the externality and intervene only when it is great relative to the expected costs of regulation. Within the area of occupational safety and health, the externalities, measured either in absolute terms or relative to the costs borne by the worker and his employer, seem far greater in most cases for health than for safety. Workmen's compensation imposes much of the cost of accidents on the employer, but there is no equivalent charge for the long-term health losses his working conditions may generate. We should also distinguish the magnitude of externalities among health losses. For example, the primary effect of noise exposure is impaired hearing, the "cost" of which is borne almost entirely by the affected worker. The asbestos worker, who runs a high risk

[4] Note here the phenomenon of pyramiding intervention. The government starts by subsidizing the costs of ill health or injury. This subsidy then reduces individuals' incentives to provide sufficiently for their own health. But society as a whole, through its subsidy schemes, has secured a financial interest in maintaining their health. This suggests that the government must intervene once again, to assure that freely accepted health risks are not excessive.

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of cancer, presents quite a different problem. Society loses from having both to support his medical treatment and possibly to care for his family after he is dead or no longer able to work. Note also that the problem of inadequate information would provide stronger support for intervention in the case of asbestos than in the case of noise. The presence of noise is obvious, and its link to hearing loss is easy to comprehend. In contrast, substances such as asbestos are carcinogenic at levels too low to detect with the unaided senses, and the ultimate link to health loss is usually too obscure for an individual worker to notice.

Equity

Two observations introduce equity considerations into the discussion of appropriate levels for safety and health: 1) Safety and health threats to workers vary significantly from industry to industry and occupation to occupation; and 2) those exposed to the highest risks are disproportionately the poor, the unskilled, and members of disadvantaged minority groups. There is little disagreement concerning these facts. Moreover, economic theory would predict that the unhindered market would tend to generate such outcomes. Poor people, on average, will be willing to accept risky work for lower compensation than higher-income individuals would demand.

It is on matters of interpretation and inference for policy that the sharpest disagreements arise. The proponents of social programs for occupational safety and health start, for the most part, with the belief that all American workers have what Representative Phillip Burton called the "inalienable right to earn their living free from the ravages of job-caused death, disease, and injury." The notion is that bodily integrity is not a commodity appropriate for trade on the market, any more than one's vote or freedom is.

Those who believe that occupational safety and health levels should be determined through market processes, modified by regulation to the extent that the conditions assumed by the competitive market model do not hold, argue in response that individuals assuming risks receive wage premiums for accepting those risks. The worker chooses his level of safety for himself. If the government prohibits certain classes of risky activities, it may well be diminishing the economic prospect of the very people it wishes to help, the most disadvantaged members of society.

Why has this argument failed to convince those who view safe

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and healthful workplaces as a right? First, there is the special nature of health, which is a nonmarket good provided, at least initially, by nature. Second, an undercurrent of paternalistic obligation runs through their thinking: Some people, the poor in particular, supposedly will not know enough to choose safe and healthful employment. Third, the correlation between occupational risk and the distribution of income causes discomfort to some proponents of government intervention: Losses of life, limb, and workdays draw attention to inequalities in our society that would otherwise be fuzzier in our consciousness. The legislative history of the OSHAct shows quite clearly that equity arguments, with their emotional overtones, were politically effective in securing Federal intervention. The implications of these arguments, however, were never spelled out.

Direct regulation

Once the decision for intervention was made, there were two critical questions. What levels of occupational health and safety should be sought? If regulation is to be effective, what form should intervention take? In writing the OSHAct, Congress took the traditional direct approach to regulation: If the market leads to undesirable outcomes, then market processes must be overridden, and the "wrongdoers" (in this case, the firms) must be made to do the "right" thing. The basic business of OSHA is setting and enforcing a myriad of standards, many of them specifying in excruciating detail the physical conditions of workplaces. Within one month of its creation, OSHA adopted about 4400 "interim" standards from pre-existing Federal regulations and from voluntary codes written by organizations such as the American National Standards Institute. Virtually all these standards were safety-related; adopted en masse under great pressure to do something quickly, without any kind of sensible review, they still constitute the overwhelming majority of OSHA's standards six years later.

Although these "consensus standards" were included in the OSHAct in part to assuage industry's fear that OSHA would otherwise act arbitrarily under the "general-duty" clause of the act, they have proved to be the source of many of the agency's problems. Despite their name, those standards hardly represented an industry consensus. They had been written instead by committees composed mostly of safety experts, with few members concerned with or knowledgeable about production or costs. So long as the

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standards were no more than voluntary industry guidelines, no real problems were created, since firms were free to ignore them. But once OSHA made them legally binding, and backed them up with inspections and fines, businessmen were appalled to discover what they actually contained. Some of these standards are trivial and unrelated to worker safety and health, such as the by now famous requirement that toilet seats be split and not round. Others were obsolete long before their adoption by OSHA: One of the most extreme examples was the prohibition (now revoked) against ice in drinking water, which dated from the time when ice was often cut from polluted rivers and lakes. Still others seem unnecessarily complex and difficult to understand, such as the notorious 140-odd standards, many of them highly technical, covering portable wooden ladders. OSHA has succeeded in eliminating, revising, or simplifying some of these standards, but in other cases it has not even kept up with revisions made by the organizations that originally issued them.

Although it adopted the consensus standards in great haste, OSHA now must follow a lengthy, formal process before it can promulgate its own "permanent" standards. Most standards begin with a recommendation from the National Institute for Occupational Safety and Health (NIOSH), an agency within HEW created by the OSHAct that also assembles and (more rarely) performs supporting scientific studies. Although it is optional under the act, OSHA almost always appoints an advisory committee, which issues its own recommendations. By law, such committees must include representatives of both management and labor, but few compromises are struck, and consensus is hardly ever achieved. Typically, the committee members representing labor and the general public (primarily protection-oriented representatives from state government or academic experts) join forces to set the most protective standard possible. As a result, the committees' findings do little to confer legitimacy on the proposed standards, and the trade associations feel free to attack them at the public hearings. Even under the best of circumstances, this process is very time-consuming, particularly with major health standards, and there are often many delays, including court challenges by the affected industries. For example, in 1971 an industry association asked OSHA to develop a coke-oven-emissions standard. NIOSH transmitted its recommendations in early 1973, the advisory committee completed its report in the spring of 1974, and the proposed standard was published in the summer of 1975. The final standard was not pro-

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mulgated until October 1976, five years after the standard was initially requested and almost four years after NIOSH presented its recommendations.

Not surprisingly, OSHA has issued only a handful of permanent standards since 1971. Progress was particularly slow in OSHA's first four years, during which it issued only four sets of major standards: three health standards (covering vinyl chloride, asbestos, and a group of 14 carcinogens) and a group of safety standards covering mechanical power presses. More recently, however, OSHA has attempted to accelerate the process, with limited success. In 1975, the head of the agency's Office of Standards Development estimated that about 98 percent of the standards addressed safety rather than health problems. Over the past two years, first under the direction of Morton Corn and now under Eula Bingham, both of whom came to head the agency from academic careers in occupational health, OSHA has emphasized the development of new health standards. No matter how fast OSHA writes health standards, however, it is unlikely to cover more than a tiny fraction of the tens of thousands of toxic substances listed by NIOSH.

Any standard confronts a tension between efficiency and enforceability. Most of OSHA's standards are "specification standards," detailing, for example, the height and construction of certain types of railings. Such standards apply most easily to permanent capital equipment. They are readily enforced, since a single visit to the workplace can determine whether they are being met. A much smaller number of OSHA standards, mostly related to health hazards, are "performance standards," setting, for example, maximum permissible noise levels, but allowing each firm to achieve those levels in the least costly manner. There may be considerable firm-to-firm variation, however, which gives performance standards an efficiency advantage, but makes monitoring difficult, particularly if performance levels fluctuate over time. In some instances, the two types of standard are combined, as in the case of coke-oven emissions, where an exposure limit is coupled with specific controls and works practices. A few OSHA standards cover training and work practices, but such standards are difficult to write, and still harder to enforce.

Critics charge that OSHA's use of standards to regulate safety is misguided because its inevitable emphasis on capital equipment clashes with the belief of most safety professionals that the worker's own behavior, not his work environment, is the prime determinant of accidents. Some safety experts continue to cite a classic

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study that attributed almost 90 percent of all industrial accidents to human error, but more recent research emphasizes the interaction of human and mechanical factors. An official of the National Safety Council, for example, estimated (at hearings held by the National Commission on State Workmen's Compensation Laws) that 18 percent of occupational accidents are due to environmental factors, 19 percent to behavioral factors, and 63 percent to a combination of the two.[5]

On a conceptual basis, at least, it is impossible to say whether capital-equipment regulations are more or less desirable, or should be more or less stringent, when other factors, such as worker care, are major determinants of accident rates. Guards on machinery, for example, may be most useful in situations where workers are most careless, and where carelessness is hence the "cause" of most accidents. However, if worker behavior is a critical factor, other forms of regulation, such as incentive schemes to induce employers to improve supervision and training, may prove to be substantially more effective ways of reducing accidents.

Several state studies provide more direct evidence on the potential efficacy of standards in reducing accident rates. In one California study, a panel of state safety engineers concluded from a review of injury reports that only 18 percent of the accidents involved could have been prevented by a fully effective government-inspection program. A report of the Wisconsin state agency concerned with occupational safety and health estimated that only 25 percent of industrial accidents were due to identifiable physical hazards susceptible to inspection, and concluded that worker training and education programs might be more effective. Various follow-up studies of accidents in New York and Wisconsin found code violations in 22 to 39 percent of the cases.

These studies probably place upper bounds on the effectiveness of standards, since no reasonable inspection program will ever eliminate all violations. Two investigators have attempted to determine if states with stiffer regulations and tighter enforcement had lower injury rates prior to the OSHAact. Neither was able to show any significant effects. Although much of this evidence suggesting the limited efficacy of standards in reducing accidents was available at the time of the passage of OSHAct, Congress never considered it.

Unfortunately, no studies were or are available on the efficacy

[5] This study and several others are cited in National Commission on State Workmen's Compensation Laws, *Compendium on Workmen's Compensation* (Washington, D.C., 1972), pp. 287-288.

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of standards in reducing the incidence of occupational illnesses. It may be argued, particularly in the absence of negative evidence, that standards offer more promise for regulating health than safety hazards; in health, a standard can control the hazard itself, rather than some piece of equipment that may or may not contribute to risk reduction. In the health area, OSHA is able to rely much more extensively on performance standards, such as exposure limits. Performance standards, however, are by no means a panacea. The major problem remains one of setting an appropriate exposure level, usually on the basis of very imprecise data. Moreover, monitoring and enforcement may pose particular problems with performance standards. Monitoring itself can prove very expensive. For example, fully one third (about $40 million) of the estimated first-year operating costs of the proposed benzene standard is simply for measuring exposure levels of employees, the vast majority of whom even now are not exposed at levels above the proposed limit. Another third of the cost would go for medical examinations and tests.

Injuries and illnesses

Congress clearly expected that the standards promulgated and enforced under the OSHAct would yield major gains in worker safety and health; one of the act's authors later expressed a hope for a 50-percent reduction in accidents by 1980. Unfortunately, even the small gains that might more realistically have been wished for have proved difficult to detect. Thus far, no serious attempts have even been made to measure OSHA's impact on the incidence of occupational disease. Although the OSHAct required improved reporting of occupational illnesses, no one believes that the current official statistics accurately reflect the magnitude of the problem. Most cases of occupational illness—particularly the more serious ones, such as cancer—come to light only after many years of exposure to hazardous conditions, sometimes long after the exposure has ended. As a result, many of the cases observed today reflect the conditions of earlier decades; correspondingly, the effect of current exposures will not be felt for many years.

Given the difficulties of identifying which illnesses result from occupational exposure and which from other factors, it may never be possible to obtain accurate measures of OSHA's impact on occupational disease. The best that might be hoped for would be some measure of exposure, which could be coupled with data on

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the effects of different dose levels in order to estimate ultimate health impacts. OSHA has not attempted to develop any such measures. Even in the case of individual proposed standards, it generally recoils at the thought of estimating the ultimate health effects. It seems unlikely that OSHA has yet accomplished much in the health area, given the paucity of health standards and the minimal resources devoted to their enforcement. OSHA's impact, however, is likely to grow in the future as it increasingly emphasizes the control of health hazards.

In contrast to occupational health, OSHA's impact on safety, to which it has devoted the bulk of its efforts, should be discernable after six years. Reducing the exposure of workers to genuine safety hazards should have an immediate effect. Three problems confront any attempt to measure OSHA's net effect on occupational injuries and deaths: 1) The OSHAct included a change in the methods by which injury-rate data are collected, thus frustrating direct comparisons of pre- and post-OSHA data; 2) although OSHA has been in existence for six years, post-OSHA data are available for only four, 1972 through 1975; 3) reported injury rates fluctuate widely from year to year, for reasons only partly understood, making it difficult to attribute small changes to any specific cause.

The post-OSHA injury-rate data fail to reveal any clear trends or dramatic improvements. For example, in manufacturing industries, the rate for injuries serious enough to result in lost workdays rose 7.1 percent from 1972 to 1973 and an additional 4.4 percent in 1974, but then fell 4.3 percent in 1975, for a three-year average annual increase of 2.3 percent—virtually the same as the 1960-1970 average. The lost-workday rate, averaged over the entire private sector, followed a similar path, rising in both 1973 and 1974, then falling in 1975, for no net change. However, the frequency rates for less serious injuries, those not resulting in lost workdays, have shown steady declines from 1972 to 1975, falling a total of 16.5 percent for the private sector as a whole and 16.7 percent for manufacturing.

OSHA has cited these declines and the 1975 decreases in lost-workday rates as evidence of its effectiveness. Such claims might be more credible had OSHA been as eager to take responsibility for the earlier increases, and had 1975 not been a recession year, when injury rates typically decline. In fact, little can be inferred about OSHA's effectiveness from the raw data, since the changes between 1972 and 1975 fall within the range of fluctuations observed prior to OSHA.

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Surprisingly few investigators have attempted to measure OSHA's net impact on injury rates; their efforts have relied mostly on multiple regression. Only one study that we are aware of tried to measure the overall impact of OSHA on national injury rates. That study, prepared under contract to the Labor Department, used pre-OSHA data to predict what changes would have occurred in the lost-workday injury rate in manufacturing industries if OSHA had not existed. The actual post-OSHA increases were in fact smaller than predicted, suggesting a positive effect, but the differences were insignificant. That study also tried to measure OSHA's impact, this time in California alone, by focusing on several types of injuries identified by safety engineers as being most susceptible to OSHA's standards-and-inspection approach. It concluded that in 1974 OSHA reduced the California injury rate in manufacturing by at least 2 to 3 percent and cut all occupational fatalities by 5 percent.[6] Even these modest results must be interpreted somewhat skeptically, however, since the overall estimates excluded those types of "preventable" accidents that actually rose more than expected. Moreover, the results are probably not generalizable, since California runs its own state plan, believed by most to be better than OSHA's, and it had a relatively strong program even before the passage of the OSHAct.

That OSHA has had little or no impact on overall work-injury rates is not surprising, since enforcement is so weak. This is so despite the fact that OSHA devotes three fifths of its budget (excluding grants to state-run programs) and four fifths of its staff to enforcement. During 1976, OSHA compliance officers conducted 76,671 inspections, an impressive sounding number until one realizes that it represents fewer than 2 percent of the approximately five million workplaces covered by the OSHAct. Even when the inspections conducted under state plans are also considered, the average workplace will be inspected only once in several decades.

Given its inability to inspect more than a tiny fraction of the workplaces under its jurisdiction, OSHA has tried to increase its effectiveness by running special programs for particular industries and health hazards. Two such programs, initiated at the agency's outset, have been abandoned. A National Emphasis Program directing more intensive inspections at the high-risk-foundry industry recently got underway as a much touted prototype effort. Un-

[6] See John Mendeloff, "An Evaluation of the OSHA Program's Effect on Workplace Injury Rates: Evidence from California through 1974," report prepared for the United States Department of Labor (July 1976).

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fortunately, by antagonizing industry, it has already lost one of its most attractive features, its design as a cooperative venture among government, business, and labor.

OSHA gives top priority to employee complaints when it schedules inspections. Following the agency's embarrassment over its slow handling of complaints from workers at the kepone plant in Hopewell, Virginia, the proportion of inspections based on complaints more than doubled from 1975 to 1976. However, most inspections are "general-schedule" inspections. The different industries are ranked on a so-called "worst-first" basis, using the expected number of injuries per firm as an index. The procedure is somewhat simplistic, and does not take account of variations across firms in times required for inspections, or in the productivity of inspections in ameliorating dangerous or unhealthful conditions.

A firm need not be inspected, of course, in order to comply with OSHA standards. Some employers will comply simply because it is the law, although OSHA's adversary stance does not foster such behavior, and many firms, particularly smaller ones, are not even aware of all of the standards that apply to their operations. Where standards apply to equipment, firms will normally come into compliance when they replace obsolete machinery. Although OSHA standards apply to the user and not the producer, manufacturers are unlikely to offer equipment that violates standards. In fact, in one case, the manufacturers of mechanical power presses supported a tougher standard on the assumption that many firms would buy new machines rather than modify old ones.

In theory, the fines levied on violators promote what OSHA euphemistically calls "voluntary compliance," a point stressed by those arguing in favor of penalties for first-time violations. In practice, few firms comply before inspection: Between 1974 and 1976, only 21 to 23 percent of inspected firms were "in compliance" when visited. Despite the potentially large fines specified in the OSHAct, the actual fines levied are very small, averaging $37.49 per violation and $188.22 per citation in 1976. Fines levied under OSHA-approved state programs have averaged still less. These tiny fines, coupled with the low probability of inspection and the distinct possibility that a violation will be missed by an inspector, give firms little incentive to comply before an inspection. Firms may also contest the citation or the proposed penalty, and indeed have done so increasingly, by appealing to the Occupational Safety and Health Review Commission (OSHRC), an independent body composed of three commissioners supported by a staff of admin-

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istrative-law judges. In 1976 there were more than 5,000 contested cases, over 8 percent of the number of citations issued.

Since OSHA was unable to inspect more than a tiny fraction of covered workplaces during its early years, a more generous test of its potential effectiveness is to examine its impact on inspected firms. Although firms have little incentive to comply before inspections, given the small fines and low probabilities, once cited firms are much more likely to be reinspected, and face far higher fines if they have failed to correct earlier violations.

Two Labor Department economists have attempted to determine whether inspections reduce injuries. They first compared industries inspected intensively under the now-discontinued Target Industry Program with other industries where virtually none of the firms was inspected. The second compared inspected and uninspected individual firms within particular industry-size groups. Neither study was able to show that inspections made a significant difference. Indeed, in both studies more than half of the results showed a perverse effect for inspections.[7]

The evidence available to date is too weak to support a flat statement that OSHA has done nothing for occupational safety. It seems reasonably certain, however, that the gains have not been major, for had they been so even the crude measures available would have been able to detect them. OSHA's impact will, no doubt, grow somewhat over time, but it seems unlikely ever to approach the levels envisioned by the OSHAct's optimistic sponsors.

The costs of OSHA

OSHA's apparent inability to secure significant gains in worker safety and health is especially disturbing in view of the costs it has imposed on the economy as a whole. Unfortunately, no comprehensive attempts have been made to estimate these overall costs. This is not surprising given the difficulty of the task, the economic vacuum in which most of OSHA's decisions have been made, and OSHA's understandable reluctance to tabulate its costs.

Compliance with OSHA's regulations can be costly in a variety of ways, including the addition of clerks to maintain required records, decreased productivity due to OSHA-mandated work practices, the purchase of expensive new equipment, and the extensive

[7] For evidence on effectiveness of the Target Industry Program, see Smith, *op cit.*, appendix C. The second study is by Aldona DiPietro, "An Analysis of the OSHA Inspection Program in Manufacturing Industries, 1972-73," Draft Technical Analysis Paper, United States Department of Labor (August 1976).

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modification of existing facilities. These costs are initially borne by firms, but most costs are likely to be quickly passed on to consumers in the form of higher prices. Some of the remainder is likely to come out of workers' wages due to productivity declines. Even if costs come out of profits, workers will be affected both as taxpayers (since lost revenues from the corporate-income tax will have to be replaced by other taxes) and as shareholders. Although individual workers own little equity, their employee pension funds own a great deal.

In 1974, the National Association of Manufacturers surveyed its members concerning the costs of meeting OSHA standards. The mean estimates ranged from $35,000 for firms with 100 or fewer employees, to $4.7 million for those with more than 5,000 employees. Shortly after the agency's inception, *Dun's Review,* also relying on business sources, estimated that OSHA would raise costs in many industries by 5 to 10 percent. It cited estimates that OSHA requirements would cost the metal-stamping industry $6 billion over five years and would add $2,000 to $3,000 to the cost of the average new home.

Cost estimates of the sort cited above must be viewed with considerable skepticism, since in most cases firms report anticipated rather than actual expenditures. Moreover, pessimism about OSHA's costs makes good politics for businessmen antagonistic to the agency. Cost estimates prepared for particular standards by consultants under contract to OSHA may reflect the opposite bias. Even those estimates, however, involve large numbers. Noise control is easily the most expensive area. An OSHA-commissioned study estimated five-year capital costs at $10.5 billion for the current 90-dBA standard and $18.5 billion for the 85-dBA standard now under consideration. Maintenance costs would add about $1 billion annually to the cost of the tighter standard. At the current rate of safety-and-health-related capital investment (slightly over $3 billion per year), the five-year capital cost of the 85-dBA standard would exceed all other safety-and-health-related capital expenditures combined.

Although the noise standard surely involves the most significant costs of compliance for industry as a whole, several other standards also impose substantial costs on particular industries. For example, OSHA has estimated that as a result of its coke-oven-emission standards, the steel industry will incur capital costs of between $451 million and $860 million and annual costs in the range of $173 million to $1.15 billion, depending on how strictly the standards are interpreted. The proposed inorganic-arsenic standard

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would cost an estimated $111 million per year. The recently proposed new benzene standard would require estimated capital expenditures of $267 million, with recurring annual operating costs of $74 million—even leaving aside filling stations and their distributors, who may be covered by the final standard.

OSHA did not voluntarily prepare the cost estimates cited above, but rather was forced to do so by an executive order issued by President Ford in 1974. That order, recently extended by President Carter, requires that all executive-branch agencies prepare "inflationary-impact statements" for major regulatory actions. These statements primarily focus on the effects of proposed standards on employment and, as their titles would suggest, inflation. The price effects of individual standards appear to be minimal for the economy as a whole, measured in tenths of a percent, although they can be quite large for particular products.

The direction of OSHA's net impact on employment, let alone its magnitude, is unknown. The fear, of course, is that OSHA will cost jobs: Exposure limits may force greater automation of some processes; price increases resulting from OSHA-imposed costs decrease demand and hence employment in some industries; some firms are forced out of business entirely.

The argument made by supporters of stringent regulation—that workers in dangerous jobs need protection because they have no safe alternatives other than unemployment—also implies that those same workers will surely have trouble finding new employment if their jobs are eliminated through government intervention. The inflationary-impact statements on the proposed standards for coke-oven emissions and for exposure to inorganic arsenic illustrate how OSHA standards may cut either way on employment. The inorganic-arsenic standard, OSHA estimates, would result in the loss of 2,900 to 3,700 jobs, with the most severe impact in the arsenical-wood-preservative industry, where employment would decline by about 24 percent. In contrast, it is estimated that the coke-oven standard will increase employment by 5,000 or more because of a productivity decline in coke-oven operations of between 18 and 29 percent. Driving down productivity, however, will strike many as a perverse way of fighting unemployment.

The missing link

Estimates of the costs of OSHA's standards have little meaning unless they are linked to the benefits provided, measured in terms

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of the value the affected individuals and society at large place on increased bodily well-being. The OSHAct makes no explicit provision for balancing costs and benefits, although the concept that absolute protection should be afforded to workers is qualified in at least two instances; the phrases used are "so far as possible" and "to the extent feasible." OSHA has interpreted "feasibility" primarily in technical terms: Is the technology available to meet a standard? Economic feasibility enters only in extreme cases, when a standard threatens the viability of a substantial number of firms in an industry. The economic feasibility of the proposed benzene standard, for example, is established by reference to the robust financial status of the petroleum industry. It is as though spending dollars does not count unless someone may be forced out of business. OSHA does claim that it considers economic factors in setting the time allowed for abating violations, but again the key consideration is the financial capability of the affected firm or industry, not whether the gains in health or safety justify the expenditure.

OSHA has steadfastly refused to subject its standards to any kind of benefit-cost analysis, repeatedly observing that there is no widely accepted method for assigning dollar values to improvements in health or longevity. While the observation is correct, OSHA's attempt to use it as a justification for failing to integrate considerations of both costs and benefits into its policy decisions is not. The rationale for government intervention in the area of workplace safety and health is not that costs should be divorced from benefits, but rather that some costs and benefits may be misperceived by, or are not borne by, private decision makers.

Fortunately, substantial progress in the reform of OSHA procedures can be achieved without attempting to resolve the problem of valuing lost lives or impaired health. OSHA's procedures have been formulated with minimal concern for economic resources. It should not be surprising, therefore, that there are significant inconsistencies. For a particular firm, compliance with either standard A or standard B may reduce the number of expected accidents by 10 percent per year. Yet compliance with A may cost only a tenth as much as compliance with B. All parties could be made better off if regulatory efforts were adjusted so that means of increasing workplace safety and health with low incremental costs were pursued more vigorously and high-cost measures relaxed, so that the marginal costs were made constant.

This argument is only slightly less compelling when we look across industries or classes of workers. Most would agree that we

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should not spend $5 million to save one life, say through safety railings, while sacrificing another, perhaps through exposure to cotton dust, to save $50,000. We should aim for what economists would call a cost-effective system, one that achieves the greatest gain for the levels of expenditure it entails.

Significant gains could be achieved if resources were directed where they were most productive. In the hypothetical example above, for instance, 99 additional lives would be saved if $5 million were redirected from safety-railing expenditures to efforts to reduce cotton-dust exposure. If this process of resource-shifting continued, always seeking the area where the greatest gain could be achieved for a given level of expense, a cost-effective outcome would be reached. One of its significant characteristics would be that the cost of securing additional safety and health would be the same in all areas of expenditure.

We conjecture that greater gains can be achieved by making current expenditures cost-effective than by increasing overall expenditures by, say, 20 percent. The pursuit of a cost-effective strategy would yield an additional benefit: It would automatically generate information on the cost of further increases in the level of occupational safety and health. This information, now unavailable, should be invaluable to Congress and the executive branch in their decision making. It is to be hoped that it would also have a significant influence on OSHA itself.

The process by which OSHA sets standards and the limited role economic considerations play in its deliberations are illustrated by the coke-oven-emissions standard issued last year. The NIOSH criteria document of early 1973 recommended certain specific engineering controls and respiratory protection, but not a change in the existing limit on exposure to coal-tar pitch volatiles. OSHA formed an advisory committee, chaired by Eula Bingham. After 28 days of meeting it submitted its report in May 1975, concluding that since there was no known "safe" level for the carcinogens involved, the exposure limit on the "indicator substance" should be set at the average level found in urban air. In other words, the coke-oven plants themselves would have to have zero emissions. The proposed standard, issued in July 1975, also adopted this zero-emissions approach, although it employed a different indicator substance. OSHA also commissioned an economic-impact study of the proposed standard and held two sets of public hearings. The final standard, promulgated in October 1976, incorporated most of the engineering controls specified in the proposed standard,

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but substantially relaxed the exposure limit. In choosing this final limit, OSHA admitted that the only "safe" level of exposure would be zero, but rejected that as not being "technologically feasible." The agency went on to argue that the standard chosen is feasible because when NIOSH measured exposure levels of different workers at the U.S. Steel plant in Fairfield, Alabama, it found them below this limit for each job classification on at least one of the three days that samples were taken. OSHA admitted, however, that many of the samples were much higher, and that the Fairfield plant is probably the "cleanest" in the country.

OSHA's analysis of "economic considerations" is almost meaningless. Estimates provided by OSHA's contractor of the total annualized costs of the proposed standard ranged from $241 million to $1.28 billion, numbers that can only be interpreted in relation to the likely gain. OSHA rejected entirely the suggestion of the Council on Wage and Price Stability that it subject the standard to a benefit-cost analysis. In fact, it rejected as inappropriate any attempt "to quantify even a range of benefits of the final rule." OSHA concluded that despite its inability, or unwillingness, to estimate the degree of protection actually afforded, the standard was justified nevertheless since the "substantial costs" are "well within the financial capability of the coking industry" and "are necessary in order to adequately protect employees. Similarly, with the recently proposed new benzene standard, OSHA refuses to estimate whether the required expenditure of hundreds of millions of dollars will reduce the number of leukemia cases by one, by a dozen, or by a hundred.

Although OSHA's refusal to place values on lives or health is understandable, some relatively straightforward calculations suggest that the costs of the coke-oven standard will be far higher than any reasonable estimate of the benefits. Consider first the fact that only 22,100 workers are expected to be directly affected by the standard. Thus the cost per worker protected, using OSHA's cost estimates, is between $11,000 and $58,000 *per year*. One suspects that coke-oven workers, who make about $13,000 per year, could be induced to continue to bear current risks in exchange for far less than even the low estimate. Estimates of the cost per life saved are more difficult to compute because of OSHA's refusal to suggest even a range of benefits. In the inflationary-impact statement, however, OSHA's contractor estimated that 240 deaths resulted each year from coke-oven use, a figure that OSHA later revised downward to 211. Using the latter number, and making

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the extreme assumption that the standard will eliminate all deaths, the cost per life saved is between $1.1 million and $6.1 million. In its testimony, the Council on Wage and Price Stability—which quarreled with OSHA's mortality estimates, but also lowered the minimum-cost estimate—argued that a more realistic range would be $4.5 million to $158 million per life saved. The witness from the Council contrasted these amounts with the figure of $240,000 per life used by the National Highway Traffic Safety Administration in estimating the societal costs of motor-vehicle accidents and the $1 million used as a high estimate by Consumers Union in evaluating the Consumer Product Safety Commission's proposed lawn-mower-safety standard. The clear implication is that more lives could be saved by spending our resources on safer roads or stronger tires rather than cleaner coke ovens.

Note that the costs of the coke-oven standard were not formally analyzed until after the advisory committee had finished its work and the proposed standard had been issued. Furthermore, the cost analysis examined only one possible standard and did not make any calculations showing the trade-offs between costs and protection at different levels of exposure. The cost per life saved for the most stringent part of the standard is undoubtedly far higher than even the figures cited above.

Most OSHA standards receive much less economic scrutiny than the coke-oven-emissions standard. None of the more than 4,000 consensus standards received any cost analysis whatever before adoption. Even under the executive order requiring inflationary-impact studies, most of the analyses have been designed to show that the economic thresholds that would require preparing a complete analysis are not exceeded. The danger, of course, is that although the economic impact may be "small" relative to the economy as a whole, the gains in worker safety and health, when expressed in comparable units, may be much smaller. Costs cannot be discussed meaningfully without some idea of the benefits to be derived, whether measured in dollars or in other units, such as lives saved or disabling accidents avoided.

One reason for the high cost of OSHA's standards is the agency's continued opposition to the use of personal-protection devices, such as respirators or ear plugs, as a means of meeting exposure limits. OSHA's basic stance is that, wherever feasible, firms must use engineering controls, such as ventilation systems to remove toxic gases, or more rarely, administrative procedures, such as the rotation of workers in hazardous areas. In the case of both the coke-

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oven-emissions standard and the proposed benzene standard, for example, OSHA permits the use of respirators only until "feasible engineering and work-practice controls" can be implemented, where engineering controls are not sufficient to meet the exposure limit, or in emergencies. Even in the second case, however, engineering controls must first be installed to lower exposure levels as much as is "feasible."

OSHA's opposition to the use of personal-protection equipment is particularly costly with regard to noise, where relatively inexpensive ear plugs or muffs can provide workers with the same protection afforded by very expensive engineering controls. An OSHA-contracted study estimated that the 85-dBA standard now being considered could be met through ear plugs and muffs at an annual cost of only $43 million, as compared to the five-year capital cost for the engineering solution of $18.5 billion. The estimated annual maintenance cost alone ($925 million) for the engineering solution is more than 20 times as great as the total yearly cost of personal protection.

OSHA's primary argument against personal-protection equipment is that workers may fail to use it because of discomfort or interference with normal activities. Organized labor has been particularly vociferous in its opposition, citing discomfort and arguing that management has an obligation to make the workplace safe. It is difficult, however, to see why OSHA has a responsibility to protect the worker's comfort as well as his health and safety. If OSHA were to permit the wider use of personal-protection devices, significant cost savings could be achieved. If workers find such devices very objectionable, then presumably their use would be a suitable subject for labor-management negotiation, with workers in a strong position to bargain for compensatory wage increases.

Alternatives to standards

On virtually all counts, OSHA has not done its job well. It has done little for occupational safety and health, and it has cost a great deal. An important question is whether the agency's failures have resulted simply from faulty execution (including the overly hasty adoption of thousands of consensus standards, excessive emphasis on safety relative to health, the inevitable start-up problems of any new agency, and, more controversially, the exclusion of economic considerations in all but extreme cases) or whether they were inherent in the basic approach taken: direct regulation

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through standards and inspections. Both views have merit, depending on which aspects of the problem are addressed.

If direct regulation is to succeed, it must be undertaken in a manner that gains it wide acceptance and legitimacy. Otherwise, as OSHA's experience makes clear, it is likely to be frustrated, at least for a significant period of time, through noncompliance and through opposing actions that bring about delays in the courts and in other adjudicatory and rule-making bodies. Any effort at regulation will also suffer from administrative underruns. OSHA is frequently chided for its management shortcomings. But even startling gains in management will accomplish little if the basic regulatory approach is flawed. At least two additional approaches should be considered, either as alternatives or as complements to standards: expanded provisions of information and financial incentives. Both of these approaches seek to harness market forces rather than to supersede them.

1. *Provision of information*: Inadequate information may prevent the market from achieving appropriate conditions. The government might provide information in a variety of ways. In some cases it may only need to assemble and analyze existing studies and data. In others, new research—including laboratory experimentation, epidemiological studies, and technical and economic analyses—will be required. The government should also play a role in interpreting and distributing the information thus obtained. This information could be provided through pamphlets and other written materials or through training provided to workers and employers. Such information could be particularly useful where health and safety issues are made part of labor-management negotiations. In some cases the government might require that firms provide particular information or training to their workers.

Current government efforts do include a variety of efforts to provide information. NIOSH conducts and sponsors research, and OSHA itself distributes various training materials and booklets, and offers a limited number of courses for workers and management. These efforts, however, are tiny relative to the resources devoted to enforcement. In part, this represents Congressional sentiments rather than agency choices; over the past several years Congress has made its deepest cuts in those portions of OSHA's budget that relate to the provision of information and analysis.

Provision of information will be complementary to whatever other activities the government undertakes. Better information should increase the efficiency of private markets, and will increase equity

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to the extent that it increases workers' awareness of the risks they face, and enables them to demand compensation or protection.

2. *Incentive mechanisms*: Economists frequently argue that where markets fail to achieve desired outcomes, the appropriate solution is not direct control, but rather modifying the incentives faced by market participants. In the 1976 Godkin lectures, Charles Schultze, now Chairman of the Council of Economic Advisors, promoted this approach, using as his title "The Public Use of Private Incentives." In many areas, he argued, incentives would be far preferable to the "command-and-control" systems of direct regulation now used. Incentive schemes secure their efficiency advantage by allowing those who are regulated to select their optimal response. In this way individual differences are respected, freedom of action is enhanced, and the costs of inadequate information on the part of the regulator are substantially diminished.

The principle of levying taxes on offending parties when externalities are involved is well established in economics, particularly in relation to pollution issues, where the taxes are referred to as "effluent charges."[8] The primary advantage of taxes over a system of uniform standards is that they allow firms to find the most efficient means of reducing the externality, and lead to an efficient outcome, in the sense that for any given level of control, expenditures are minimized. In theory, standards could be set on a firm-by-firm basis to reflect varying costs and benefits; in practice, such a scheme would be unworkable. Taxes also provide firms with an incentive to develop new procedures for reducing hazards still further—unlike standards, which may block the adoption of innovative technologies. Furthermore, a tax system has the advantage that firms that do not or cannot respond to the incentive pay a penalty. Thus even if the injury rate in a hazardous industry is not reduced, the prices of the goods produced will rise, thus shifting demand towards goods produced by less hazardous techniques. (David Lloyd George reportedly noted that workmen's compensation puts this principle to work: "The cost of the product should bear the blood of the working man.")

Incentive mechanisms hold particular promise for occupational safety. As this article was being written, Charles Schultze, Bert Lance, and Stuart Eizenstat gave such an approach a degree of political credibility when in a well-publicized memo they urged

[8] For a nontechnical statement of the arguments in favor of effluent charges, see Larry Ruff, "The Economic Common Sense of Pollution," *The Public Interest*, No. 19 (Spring 1970), pp. 69-85.

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President Carter to supplant OSHA's safety standards with financial incentives. In place of virtually all of its several thousand detailed safety standards, OSHA could levy a tax on employers for each injury sustained by their workers. An injury tax would give firms generalized incentives to improve safety programs, stimulating them to control the whole range of factors that contribute to accidents, not just to control the limited number of physical conditions susceptible to direct regulation. The mix of activities would vary from firm to firm. Some would probably continue to rely solely on the mechanical safeguards required by standards, but others undoubtedly would try innovative approaches, such as safer work practices and new training programs. Moreover, as the cost of accidents rose, safety records would probably become a more important factor in promotion decisions, thus transmitting incentives down to the lowest levels of management. Firms with unusually good safety records, such as DuPont (whose injury rate is only a small fraction of the chemical industry's average), are generally suffused with tremendous safety consciousness at all levels.

An injury tax would be relatively easy to administer. It no longer would be necessary to inspect individual workplaces on a regular basis. Firms could either report themselves, as they do income taxes. Or the tax system could be tied to workmen's compensation claims, where the administrative mechanism is already in place. Tying the fines to workmen's compensation would give workers an incentive to police compliance by their employers.

Even if it is not coupled with a tax to reflect externalities, workmen's compensation should be modified to enhance the incentives for firms to provide safer working conditions, to "make safety pay." But to promote an appropriate level of safety, a firm's compensation costs must reflect its own accident rate, and not simply the average experience of firms of similar size in the same industry. One way of moving towards this goal would be to require that insurance policies for workmen's compensation include significant deductibles and co-insurance rates, both keyed to the firm's size.[9]

What benefits would come from a well-conceived incentive approach to occupational safety? On the resource side, we could avoid the costs of OSHA's irrelevant impositions. There would be gains

[9] Laurence Silberman, Undersecretary of Labor at the time of the passage of OSHAct, now believes that federalization of workmen's compensation, coupled with a strengthening of its safety incentives, might have curbed political appetites for federal intervention, thus heading off OSHA as we know it. Silberman also reports that he would have pushed hard for such an approach had he then had his present understanding of economics.

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for equity from having workmen's compensation pegged at levels that reflect full economic losses. Occupational safety might improve noticeably—but for any reasonable level of incentive, it is unlikely that the accident rate would be cut dramatically.[10] As distasteful as it may be, given the competing claims for resources, we may have to accept a significant level of occupational accidents as a cost of doing business.

Incentive mechanisms, both taxes and workmen's compensation, are a less promising approach to occupational health. Firms should be taxed for the illnesses their workers suffer as a result of employment. But most cases of occupational illness cannot be distinguished from cases resulting from other causes. The absestos worker who contracts lung cancer, for example, may be the victim of an occupational illness, but he may also be the victim of general air pollution, cigarette smoking, or his genetic inheritance. Quite likely, his illness results from the interaction of several factors. Even if an illness can be identified as occupational in origin, it may be unclear which employer should be taxed. Black lung, for example, is unquestionably an occupational disease of coal miners, but if a miner has worked in several different mines, it will probably prove impossible to determine which period of employment "caused" the illness.

Given the difficulties of connecting individual cases of illness with particular firms, a tax, if employed, would probably have to be levied on workers' exposure. This approach would be analogous to the use of effluent charges for environmental pollutants. Such taxes would lack many of the advantages of an injury tax, since it would be necessary to set fee schedules for individual substances, and monitoring of exposure levels would still be required. Like an injury tax, however, an exposure tax would achieve cost-effectiveness in a way that standards cannot, by allowing individual firms to achieve different exposure levels depending on their particular costs. For example, Nicholas Ashford, a proponent of strict regulation and generally an enthusiast of standards, testified before OSHA that if an 85-dBA noise standard were imposed, the ratio of costs to benefits (the latter measured in terms of reduction in person-years of hearing impairment) would vary by a factor of 10 across even broad industry classifications. This wide variation suggests

[10] Robert Smith, *op. cit.*, estimates that a tax of $2,000 per disabling injury would be required to reduce injuries by 8.8 to 12.5 percent. Smith's estimates, however, may be too pessimistic, since they are based on his remarkably high estimates of the wage premiums paid for risk.

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that by tightening the standard in industries with low cost-benefit ratios and relaxing it in those with high ratios, the same reductions in hearing loss could be achieved at far lower cost. The beauty of a noise tax would be that this efficient outcome could be achieved through a single tax schedule: Each firm would control noise up to the point where the cost of further reductions just exceeded the tax.

Taxes and other financial-incentive mechanisms need not totally replace standards, an important feature given the continuing political appeal of direct regulation. For example, an injury tax might be coupled with the most sensible current safety standards. In occupational health, such a combination could be employed for the vast majority of hazardous substances for which there is no positive level of exposure that is absolutely safe. A standard, chosen with careful attention to both benefits and costs, would be set as a rigid upper limit. An exposure tax, or some other type of financial incentive, could then be applied to encourage firms to achieve lower levels of exposure where it was cost-effective to do so. By providing appropriate incentives and then leaving decisions to the firm, efficiency is promoted in a number of ways: Regulatory impositions whose costs are well out of line with the benefits provided are avoided; variations among firms and industries in their costs and capabilities for achieving gains are automatically recognized; all possible methods for increasing workplace safety and health are pursued, including enhanced training, changed work practices, and new technologies; and pressure is maintained to achieve further gains.

How OSHA went wrong

It is profitable to review the OSHA experience, particularly as it may contribute to an understanding of the Federal government's more general approach to regulatory issues. The appetite for favorable results is often so enormous that the probability of success seems almost irrelevant when positive government action is contemplated. Indeed, at the time that OSHA was formed, no evidence was presented that even relatively modest gains were achievable. In the political context, hope alone was sufficient to launch a major regulatory intervention. Information that might have helped structure the agency's approach—for example, data on the causes of accidents—was ignored.

The chain of causality in the creation of OSHA ran from per-

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ceived crisis, through political pressure, to regulatory response. At no juncture did basic conceptual questions relating to market performance or failure, and the appropriate role for government to assume in response, play an important role in the debate. The lesson, a painful one for economists, is that however relevant or powerful economic concepts may be, they are likely to be ignored when political passions are strong.

In at least three different ways, central lessons of economics were, and for the most part continue to be, ignored at OSHA. First, nothing about the operation of the agency suggests that it recognizes its role as a complement to other predominantly incentive-based mechanisms that were already in existence. The most significant of these is the market and the wage premiums it offers for incurring risks. (For OSHA and its enthusiasts, the subject of compensating wage differentials is more than retrograde; it is taboo.) The principal government-operated incentive system now in place is workmen's compensation. The second neglected lesson is that incentives influence actions. If you inspect only a small percentage of firms, and levy modest fines, few firms will comply voluntarily with the more costly regulatory impositions, particularly if the legitimacy of such impositions is questionable. If you make accidents and health-risk exposure more expensive, employers will make efforts to reduce them. Even if strong incentives fail to accomplish much, we will have learned an important fact that should influence policy: The price of achieving reductions in work-related injuries and illnesses is high. The third elementary lesson overlooked by OSHA is that occupational safety and health are bought at a price. Indeed, OSHA's procedures, particularly its refusal to specify the benefits of its standards, enshrine the fiction that no trade-offs need be made between resource costs and worker protection.

It is easy to diagnose the problem: Virtually all of OSHA's activities affect the allocation of resources, yet it ignores economics, seeing itself in a more missionary role. The OSHAct made a standards and inspection system the preeminent weapon for improving occupational safety and health. OSHA in its first five years concentrated almost exclusively on safety at the expense of health, though the need and justification for government intervention is much stronger in the latter area. OSHA is attempting to correct the second mistake, but unless it also corrects the first, the situation may well be worsened rather than improved. Although the potential gains from health regulation may very well be large, the

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costs will be staggeringly high if OSHA continues along its present course.

The solution is less evident. No internally generated effort could be sufficient to get OSHA to make estimated costs and contributions a primary guideline for its interventions, or to give alternative modes of intervention fair consideration. But Congress could rewrite its legislation to make OSHA rely more heavily on incentives, particularly for safety, and to pay appropriate attention to both performance and cost.

Reformers themselves should beware the dangers of optimism. The formulation of any new policy in occupational safety and health, whether to restructure the tasks of OSHA or to stride boldly in a different direction, should start with the recognition that the history of regulation is a history of disappointment. Performance has rarely matched expectations. OSHA may be an extreme case, but it is not an exception.

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The new housing-cost problem

BERNARD J. FRIEDEN

THE huge postwar generation that nearly overwhelmed the country's institutions of higher learning in the 1960's has now begun to make its numbers felt in the growing scramble for new housing. As the children of the 1940's and 1950's begin to raise families of their own, they are leaving behind the singles' apartments built just a few years ago to search the suburbs for single-family homes. Their numbers are so large—households headed by those between the ages of 25 and 34 increased by 3.3 million between 1970 and 1975—that the situation is reminiscent of the late 1940's. At that time, returning veterans, plus young couples who had been unable to afford a place of their own during the Depression and then to find one during the wartime shortages, were clamoring for homes. Within a few years, the Levittowns and other suburban developments met most of the need, set new records for single-family homebuilding that still stand, and put in place the middle-class suburbia that shaped American life from the 1950's to the 1970's.

Today the situation is different. The Levitt house sold for just under $8,000. Veterans using the G.I. Bill could pay nothing down and $56 a month on the mortgage. Today's young families find typical new homes selling for about $50,000, requiring a down payment big enough to buy the 1948 Levitt house outright, monthly

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mortgage payments close to $300, and operating costs swollen by escalating fuel prices, high property taxes, and expensive maintenance and repairs. True, incomes are also much higher than they were in the 1940's—median family income was $3,031 in 1947—and the typical new home is much larger and better equipped than its postwar counterpart. But for the average family the strain is a serious one, even if rising expectations helped create it. Moreover, the suburbs have become increasingly hostile to growth. Homebuilders trying to meet today's demand face elaborate new growth controls, utility restrictions, special permit requirements, environmental reviews, and development charges—all of which add to the cost of production.

So far only the leading edge of the postwar generation has been pushing its way into the single-family-home market. The 30-year-olds who are now buying houses were born in 1947. Yet the very high birth rates after World War II continued through the early 1960's. Much more is still to come: Between 1975 and 1985, households headed by people between the ages of 25 and 44 will grow by 8.8 million, according to a forecast by John Pitkin of the M.I.T.-Harvard Joint Center for Urban Studies.[1] (The *lowest* projection of the Census Bureau shows an increase of 9.3 million households in this group.)

Already, however, the housing problems of young, middle-income families are attracting national attention and prompting legislative remedies. Public discussion of housing policy has taken a new turn. In the 1960's, under the influence of the civil-rights movement and the rediscovery of poverty, reformers defined the problem as how to get the housing industry to do for the poor and minorities what it was already doing very well for the majority.

Now the center of attention is the young family, not poor and not rich, having a hard time finding the money to live in today's single-family suburban homes. Instead of racial or income group inequity, the issue is now intergenerational inequity. From the late 1940's through the 1960's, a new suburban home was within the reach of most middle-income families. Since the late 1960's, sales prices for both new and existing suburban homes have gone up faster than incomes, and operating costs have gone up faster still. As a result, the young family trying to buy its first home faces

[1] For sources of data and other analyses related to this article, see Bernard J. Frieden, Arthur P. Solomon, David L. Birch, and John Pitkin, *The Nation's Housing: 1975 to 1985* (Cambridge, M.I.T.-Harvard Joint Center for Urban Studies, 1977).

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high prices and few choices. The pathway to a suburban home —with its opportunity for social mobility, status satisfaction, access to good public schools, and financial benefits of homeownership— demands greater sacrifices from young families today than it did in the recent past. Public officials are taking notice because the housing system now seems to be delivering less than anticipated, not only to the poor but to the large (and voting) middle class as well.

Cost increases and declining purchasing power do not tell the whole story, however. Despite the high price of new housing, in 1976 single-family-home construction came close to the records set in the 1950's: Clearly, a large number of people are still able to buy new homes. As recently as 1973, when *The Public Interest* last looked at housing costs, B. Bruce-Briggs concluded: "American housing is *not* getting more expensive, except for the minority whose income is not keeping pace with national gains." A look at the evidence is in order, both to test whether the newly identified problems of young homebuyers are serious, and also to find out how consumers and producers are coping with price changes. Also, the troublesome record of government housing programs in the past decade argues strongly for a careful look at the housing economy before we take the next public plunge.

The cost increase

The rising cost of housing is real, but it is important to specify that the type of house is the single-family home for sale, and the time period is from the late 1960's to the present. For more than 20 years after the end of World War II, steady increases in real income brought the cost of homeownership within reach of more and more families. But since 1970, families with near-average incomes have lost purchasing power for single-family homes. The increasing strain, then, is recent—too recent to show up in the data available to Bruce-Briggs in 1973. The average family is not worse off than the average family 20 years ago, but it is worse off than the average family of the late 1960's. And the new trend has not yet affected rent levels as much as homeowner costs. So the problem is by no means a crisis; but in a country where homeownership is the middle-class norm, where consumers have high expectations for their living standards, and where increases in real income have been the typical experience for a long time, the problem is serious enough.

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Between 1970 and 1976, the median sale price for new homes increased by 89 percent, from $23,400 to $44,200. For existing homes that were sold, median prices went up 65 percent, from $23,030 to $38,100. During the same period, median family income went up 47 percent, from $9,867 to an estimated $14,500, and the consumer price index went up by 46 percent. The biggest increases of all were in monthly ownership costs for single-family homes, including mortgage payments, fuel and utility costs, property taxes, and maintenance outlays. For the median-priced new home, monthly costs rose more than twice as fast as incomes—up by 102 percent, from $218 to $441. For the median-priced existing home that was sold, monthly costs went up one-and-one-half times as fast as incomes, by 73 percent.

Another way to gauge the loss of purchasing power is to calculate what percentage of families in the country were able to afford the ownership cost of a median-priced home each year. For this calculation, I have followed the conventional assumption that a family can afford to spend up to 25 percent of its gross income for housing. By this standard, about 45 percent of all families in the country were able to afford the ownership cost of either a new or existing median-priced home in 1970. By 1976, that proportion was down to 27 percent of families able to afford the monthly cost of a median-priced new home, and to 36 percent able to afford the monthly cost of a median-priced existing home.

Figures based on median prices might be misleading if the lower half of the price distribution included a large proportion of homes selling far below the median level. This is not the case, however. Except for mobile homes, new houses selling for less than $20,000 have almost disappeared. Families with near-average incomes would be able to afford houses in the $20,000-$30,000 price bracket, but these too are available only in small and declining numbers. By 1976, only 12 percent of all new homes sold for less than $30,000.

Prices for existing homes are not lagging far behind. By November 1976, only 10 percent of existing homes sold for less than $20,000, and 20 percent sold for $20,000 to $30,000. The supply of single-family homes that the average family can afford (priced at roughly twice the median income) is small and growing smaller. Price and income data show that homeownership puts much greater strain on the budget of the middle-income family today than it did only seven years ago.

Surveys of buyers of new houses in 1965-66 and then in 1975-76 show that middle-income families are withdrawing from the mar-

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ket. In 1965-66, families earning between $5,000 and $10,000 (median family income in 1965 was $6,956) dominated the market for new homes. This group represented 43 percent of the nation's families, but bought 53 percent of the new homes. Even the lowest third, earning less than $5,000, bought 17 percent of the new homes; while the top quarter, earning $10,000 or more, bought 31 percent of the new homes.

Ten years later, in 1975-76, homebuilding was mainly for the well-to-do. The middle-income group, earning between $10,000 and $20,000 (the 1975 median family income was $13,719), were 41 percent of all families, but they bought only 38 percent of the new housing. Those with incomes below this level were now out of the market; they were a third of all families, but they bought only 4 percent of new homes. Families earning $20,000 and more—the top fourth of the nation—now dominated the market, buying 58 percent of the newly built homes.

Homebuilding fluctuates from year to year, and there is no way to be sure that 1965-66 and 1975-76 are entirely representative of the old and the new housing economies. Still, the change in the composition of homebuyers seems substantial. Whether measured by price trends relative to income, by the proportion of families able to afford the median-priced home, or by surveys of who actually bought new houses, the market for single-family homes has changed since 1970, to the disadvantage of the average family.

How consumers cope

People who value homeownership still have several options open to them, despite rising costs. A look at the strategies consumers are using suggests that many are finding ways to cope with the situation for the present, but that their solutions may not keep working for the next wave of young families facing higher prices.

1. *Trading up.* Most families buying new homes are trading up from another home they already own. The family that has owned its home for a few years can benefit from recent inflation by selling at a profit. (Alan Greenspan was correct in his claim that inflation has at least one advantage: It enables people to live in a more expensive neighborhood without having to move.) So the prior owner has a valuable resource that helps him buy a new home, while the first-time buyer faces a high price with no compensating trade-in value. In 1975-76, even though most families who bought new homes were young (median age of household heads was only

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33), those buying for the first time were only 35 percent of all buyers. With the increasing difficulty of buying a first home, however, fewer young families are likely to be able to use the trading-up option in the future.

2. *Pooling incomes.* Women's liberation came along just in time to help families cope with inflation. Many families have propelled themselves into high-income brackets by combining two incomes. In 1975-76, more than half the homebuyers with incomes above $20,000 had both husbands and wives working. Overall, 43 percent of the new homebuyers pooled incomes from husbands and wives —a figure corresponding closely to the proportion of all married women who are in the labor force. Among first-time homebuyers, however, a higher proportion—59 percent—were pooling incomes. Whether this strategy will continue to work depends mainly on whether the economy keeps generating jobs for women who want to work, and perhaps also whether day care will be available at reasonable cost for working wives with preschool children.

3. *Stretching resources.* Families with incomes of $20,000 or more can afford the cost of homeownership without special strain. Households of average income that buy new houses, however, are spreading their resources thin to cover the cost. More than half the families of near-average income ($10,000-$14,999) who bought new houses in 1975-76 paid between $30,000 and $40,000, or well above twice their earnings. At average monthly costs for houses of this price level, a family earning $14,000 would have to spend one third of its gross income for housing. This is a heavy burden by most standards, but it may make good economic sense for young families who expect to have higher earnings in the future, and who base their purchase decisions on calculations of long-term income. If they buy now, they may benefit from price appreciation of their own homes, while if they wait they may find prices even higher in the future. The continued effectiveness of this strategy depends on the future of the economy, and whether it generates gains in real income that will keep justifying optimism for the future.

4. *Improving existing houses.* Another possible strategy for first-time homebuyers of average income is to find older houses in need of repair and to renovate them. Data on expenditures for home improvements in single-family houses, after corrections for inflation and for growth of the housing stock, show no significant increase overall. One type of home improvement has been growing steadily, however: do-it-yourself work in which the homeowner buys materials and supplies the labor himself. In real dollars, homeowners

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increased their spending on do-it-yourself projects by 21 percent from 1970 to 1975.

Another option for middle-income families would be to compromise their standards and buy homes that are smaller and less fully equipped than typical new homes of the past few years. Far from compromising, however, consumers have been buying houses of higher quality each year. In comparison with houses built in 1970, those sold today have more space, larger lots, more bathrooms, and bigger garages; a higher proportion have central air-conditioning, fireplaces, and built-in dishwashers.

Simpler and cheaper houses have been available, though, for those who wanted them. As prices began to escalate, builders in many parts of the country tried to cut costs by producing smaller houses with less elaborate equipment. Demand for these "back-to-basics" houses proved to be very weak: They sold no faster than more expensive homes and in many cases not even as fast. (One Massachusetts builder who sold houses with two rooms unfinished found that his customers promptly hired contractors to finish them.) With higher profits as well as higher business prestige to be earned from more luxurious homes, builders took the pulse of the market and began to add quality once more.

Even for houses of constant quality, median sales prices have been climbing noticeably faster than consumer income: Between 1970 and 1976, prices were up 63 percent for roughly comparable homes while median family income was up 47 percent. Quality improvements then accounted for an additional 26-percent price increase, compounding the underlying inflation.

An unstable market?

Taken together, the strategies consumers have found are now generating a considerable demand for new single-family homes, but the current demand rests on a weak base. Families in the top 25-percent income bracket are buying most of the homes. They want high quality and are able to pay for it. Many are not in high-paying occupations but made their way into the $20,000-and-above income level by pooling the earnings of a husband and a wife.

Some middle-income families have also been able to buy new homes by stretching their resources thin to cover high monthly payments or by trading up from a house they were fortunate enough to have bought a few years earlier, when prices were lower.

The group of young families now looking for homes is so large

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that even if most are priced out of the market, the total of those able to afford new homes is enough to keep the homebuilding industry very busy indeed. Single-family-housing starts reached 1.16 million in 1976—a near-record level, approaching the boom years of the 1950's—and they have continued very high into 1977. But in this case, what is good for the industry may not be good enough for the country. If new homebuilding reached a broad market, as it did in the 1960's, we would have a record-setting construction boom. Instead it is reaching only a narrow segment of an exceptionally large age-group.

Whether the consumer strategies that are working now will continue to work is problematical. If homeownership costs continue to outpace income increases, fewer young families will manage to buy the first home that they can later use as a basis for trading up. Another downturn in the economy could wipe out jobs for secondary wage earners—thus blocking the "pooled-income" solution—and possibly frustrate the expectations that heavily mortgaged families have of higher future incomes. Further, the fact that many homebuyers have mortgaged themselves to double incomes or to anticipated higher earnings means that current consumer tactics have created a large group of marginal homeowners. Another recession would be a very serious threat to the tenure of this group, to whatever equity they have built up in their homes, and to the social status that goes along with homeownership.

Other options

If today's strategies do not keep working, others may take their place. More families may decide to rent instead of buy, and more may decide to sacrifice some quality and buy a "basic" home. Buying a mobile home, renting out part of a single-family home, or renovating an old house are also possibilities.

Although *some* families will undoubtedly follow each of these courses of action and thereby reduce the pressure for costly new construction, the choices of most young families will still require a high level of homebuilding.

The American love affair with homeownership is rooted in attitudes and commitments that make it difficult to find substitutes for new suburban homebuilding. Recent surveys and polls show that the ideal of a free-standing single-family home away from the city continues to maintain its dominance. A 1974 Gallup Poll found an overwhelming majority of people wanting to live in the

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suburbs or in a small town, rather than in a city. Only 13 percent preferred city living, compared with 22 percent in a similar 1966 survey. Three out of four people said they wanted to see future housing take the form of single-family homes spread through open areas, and two out of three considered a sizable piece of land, up to one acre, as an important criterion for selecting a new home.

With these attitudes as a starting point, what are the prospects that Americans will rediscover the pleasures of city life, and in so doing take care of their housing needs without creating additional demand for new construction? Big-city mayors and some critics of suburbia have been calling for a middle-class return to the city ever since the 1950's, and some continue to predict it. For the first time in the postwar period, housing economics is working in favor of this return. The high cost of suburban homes, both new and existing, makes the price of older in-city housing a bargain by comparison. Some young families will decide to live in cities, perhaps trading off the cost of private schools against savings on home purchases. And some cities will attract enough middle-income families to bring new cheer to mayors and critics of suburbia.

But another feature of American life—migration—will greatly restrict the extent to which existing houses in the older cities can substitute for new construction. The population is dispersing out of the large cities, leaving behind their stock of existing houses that might be suitable for renovation, and moving rapidly into newer urban areas in the South and West, and into small cities and towns in the Northeast and North Central regions. Not only the central cities but entire metropolitan areas are losing population. Between 1970 and 1974, 10 of the 25 largest metropolitan areas in the country had population losses, including New York, Chicago, Philadelphia, Detroit, Cleveland, Seattle, and even Los Angeles-Long Beach. Between 1975 and 1985, the South will attract more population growth than all other regions combined, according to a migration model developed by David Birch of M.I.T. And metropolitan areas of one million or more in the Northeast and North Central regions will grow by only 5.7 percent, while small communities outside metropolitan areas in those same regions will grow by 16.4 percent, according to the same forecast.

These large streams of migration weaken the prospect for revival of older, in-city neighborhoods in the areas people are leaving; and the places to which people are migrating are too new and in many cases too small to have much of a supply of older housing that could accommodate newcomers. Many people place a high value

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on the freedom to move, whether in search of economic opportunity, a change of environment, or more congenial social surroundings. A footloose population, however, requires a high volume of new construction to take care of its housing needs.

As an alternative to homeownership, rental housing similarly has only limited potential. Rent levels have lagged behind homeownership costs mainly because an unprecedented boom in apartment construction in the early 1970's created a temporary oversupply. Owners of rental property have had to face the same increases in operating costs as homeowners: higher fuel bills, property taxes, maintenance and repair expenses, and financing charges. High vacancy rates have so far prevented them from fully passing these costs along to their tenants. As existing apartments fill up, however, rents will almost certainly begin catching up with homeowner costs.

Still, more young families may decide to rent, especially in view of the trend toward fewer children per family. Further, the federal income-tax advantages of homeownership are decreasing. The largest of all federal housing subsidies have been the homeowner income-tax deductions for mortgage-interest and property-tax payments; in 1975, they amounted to $7.4 billion. As a result of recent changes in the tax laws, fewer taxpayers have been itemizing their deductions, and therefore fewer are claiming the homeowner tax advantages. The proportion itemizing their deductions was down from 58 percent in 1969 to 31 percent in 1975. According to a recent study by George Peterson of the Urban Institute, it could be as low as 20 percent by 1978. Reduction of the tax benefits should encourage some families to rent who might otherwise buy homes. Once the present surplus of rental units is absorbed, however, a switch toward renting would not reduce the need for new construction, but would merely shift some demand from single-family homes to apartments.

Similarly, young families who cannot afford to buy new single-family homes may decide to buy mobile homes instead. Manufacturers have made steady improvements in the quality of mobile homes, yet their price remains well below the cost of a new house. An increase in the mobile-home share of the market is likely, but again there are reasons to question how great the increase will be. First, during inflationary times, houses tend to appreciate in value, while recent experience is that mobile homes depreciate fairly rapidly. Second, many localities either exclude mobile homes altogether or else drastically restrict their number and location.

The change in consumer behavior that could have the greatest

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impact would be a willingness to accept some reduction in the quality of a new home. Why middle-income families have been reluctant to buy "basic" homes is something of a puzzle. Perhaps, as Detroit's experience with compact cars suggests, a great many people want certain products to be luxurious even if they must make great sacrifices to buy them. Still, as it becomes evident that new home prices are going to stay high (if not go higher), many families who want a suburban home may reconsider what quality they need. In particular, with late childbirth and few children now the norm, families may decide that they can get by with fewer rooms than the large homes built in the early 1970's provided. If so, they should be able to buy newly built homes with fewer than seven rooms at a price saving, or they can buy a large home and rent out part of it.

Also, after homebuilders have sold most of what they can sell to the top fourth of the population, they will surely try to return to basics once more. Increased attention to the design and furnishing of smaller homes may make them more attractive to the consumer.

What role for government?

One other step by consumers is predictable: a turn to government for help. Renters have already done so, reviving rent control in many communities during the past few years. Potential homeowners are a large and influential group in the population. Members of Congress have already taken note of their problems and have begun to draft legislation.

Federal action is likely for other reasons, as well. The construction industry is too important a sector of the economy to ignore if its current recovery begins to falter, and spokesmen for builders, labor, and mortgage lenders are not without influence. Further, if there is underproduction for the middle class, the poor will also feel the effects. Middle-income housing demand has been the driving force behind the steady expansion and improvement of American housing for all income groups since World War II. Without a volume of homebuilding large enough to take care of population growth and mobility and to produce a surplus beyond that, the poor would face limited choices and tough competition. Interest groups concerned with the well-being of the poor therefore also have a stake in measures to encourage homebuilding.

What is an appropriate role for government? I believe the first item on the federal housing agenda at this point should be to try

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to contain future increases in housing costs. If the government were to decide instead to start a general subsidy program for homebuyers, it would have to be huge to cover the large number of eligible middle-income families. New subsidies for middle-income families should have lower priority than finding ways to help the poor, who suffer more severe deprivation because of high housing costs and who currently have no large-scale housing assistance available to them. And new homeowner subsidies may also be unnecessary. If future cost increases can be kept in line while real income begins to grow once more, most middle-income families should be able to make reasonable adjustments on their own.

There is still another compelling reason why government should turn its attention to bringing costs under control: Government action has contributed directly to the recent cost inflation.

Sources of the cost increase

Most of the many cost components of producing a new home have been rising faster than incomes since 1970. No single factor explains why inflation has been more severe in homebuilding than in other economic activities. The main cost categories in the production of a single-family house are building materials and construction labor, which together account for about half of total costs; land purchase and development, about 20 percent; financing, about 10 percent; and overhead and profit, about 12 percent.

Residential construction costs in general have gone up 62 percent since 1970, with materials costs accounting for much more of this increase than labor costs. A construction-cost breakdown for single-family houses shows lumber costs up by 50 percent and carpentry labor costs up by 30 percent from 1970 to 1974.

The fastest-rising costs have not been for construction, but for land purchase and development and for financing, according to a study by the National Association of Home Builders. Between 1970 and 1974, land cost rose by 62 percent and financing by 148 percent for a typical single-family house. The financing cost consists mainly of interest on the construction loan. Since short-term interest rates have come down considerably since 1974, this factor is now less important in explaining current cost levels.

These production costs influence the sales price of housing, but still other factors have pushed up homeownership costs for the consumer. Mortgage-interest rates fluctuate but have been much higher in the past few years than they were in the 1960's. Fuel and utilities,

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property taxes, and maintenance and repairs are all up sharply; these operating costs for single-family homes have been rising twice as fast as median incomes since 1970.

What can government do about these costs? Some important costs, such as energy, are beyond the reach of housing and related economic policies. But several other important ones—interest rates, materials prices, and land costs—are very much subject to government influence, which has recently had the effect of making cost increases more severe rather than less.

The Federal government enters the cost picture mainly as the destabilizer of housing and credit markets. At times when the economy is expanding rapidly and inflationary pressures appear, the Federal Reserve Board restricts the money supply, and short-term interest rates rise. Depositors then withdraw funds from mortgage-lending savings institutions to take advantage of higher rates of return from treasury notes and other short-term investments. Faced with an outflow of funds, the savings banks and savings and loan associations cut back their new loans, and builders in turn start fewer houses. High short-term interest rates further raise the cost of construction loans for whatever homes are built, while the restricted supply of mortgage funds leads to higher interest rates for those homeowners who are still able to buy.

The rationale behind this economic policy is that cutting back homebuilding will help relieve inflationary pressures on other sectors of the economy. From the point of view of federal policy, housing is the balance wheel that helps stabilize the rest of the economy. From the viewpoint of those who work in the housing industry, though, it is more like the roller coaster of the economy, alternately exhilarating and frightening. For the consumer, it is feast to famine every few years, and the feast is an expensive one.

Whatever the extremes of the housing cycle contribute to the rest of society comes at a high cost to the homebuyer. When housing starts go from a peak rate of 2.4 million annually in the first quarter of 1972, to a low of 990,000 per year in the second quarter of 1975, and then back to 1.8 million in early 1977, it means that the industry must operate well below its capacity much of the time. Underutilized plants and equipment, expenses of warehousing inventories during slack periods, high labor turnover, and start-up expenses all add to the cost of producing building materials. Construction workers count on being unemployed fairly often, and therefore demand high hourly wages to assure a reasonable income over the years. Furthermore, materials costs move up and down over the course of

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the housing cycle, with plywood typically 20 percent more expensive at the top than at the bottom of recent cycles. But most housing is built during the peak of the cycle, when all prices are highest. In short, the costs of instability in homebuilding are substantial, and the homebuyer pays for most of them.

In the long run, uncertainty over output levels discourages firms from investing in cost-reducing equipment or in developing production methods geared to a high volume. The yo-yo motion of housing starts requires firms to emphasize flexibility and risk-limitation more than efficiency of production.

The last time the federal government turned its attention to cutting the costs of homebuilding, it tried to bring new technology to this field without dealing with the underlying instability. President Johnson's Committee on Urban Housing (the Kaiser Committee) presented an attractive vision of a future high-technology housing industry that would use scientific research to search out innovations in materials, designs, and organizations. The obstacles it identified were mainly local building code restrictions that discouraged innovation, and the related fragmentation of housing markets.

Following the thinking of the Kaiser Committee, the Department of Housing and Urban Development mounted several programs to encourage the use of new technology in housing (Operation Breakthrough in the early 1970's was the best known), and further used its leverage to persuade many localities to modernize their building codes. The results were disappointing: The new construction technology offered few advantages and little cost-reduction in comparison with what conventional single-family homebuilders were already doing. The "stick-builder" was more efficient than the critics thought. Over the years, without special federal efforts, builders were making greater use of factory-built components and time-saving new products, and were steadily reducing the cost of on-site labor.

A more promising way to contain cost increases would be to stabilize production levels, or at least to reduce the extreme instability that now plagues the industry and its customers. An obvious first step would be to rethink current monetary policies to try to find anti-inflationary strategies less damaging to homebuilding than the present ones. If that should prove difficult, other steps are also possible. One would be to use low-income-housing-production programs to offset cyclical instability, by accelerating them when housing starts drop and cutting them back when private starts increase. The recent pattern has been exactly the opposite: Housing-subsidy programs set record volumes of 400,000 units a year from 1970 to

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1972, precisely when private starts were also at record highs. In January 1973, President Nixon suspended all the major subsidy programs just as the housing slump was starting.

Another way of sheltering homebuilding from the consequences of high interest rates would be to offer cash subsidies (or tax credits) that homebuyers could use to reduce their down payments during slump periods. Kenneth Rosen of Princeton University has advanced this idea on several occasions, basing it in part on the successful experience he has studied in other countries. Both Canada and Norway have been troubled by extreme seasonal fluctuations in homebuilding with resulting high unemployment during the winter months. In both countries, a moderate incentive payment (on the order of $500) to any homebuyer who would have a house started for him in the winter was enough to turn the seasonal pattern around. These payments did not create new demand, but they changed the timing of demand. Changing the timing of demand should also be the purpose of countercyclical measures to help stabilize homebuilding. The social cost of such incentive payments would be very small, since they would reduce unemployment in the building trades and encourage the use of otherwise idle productive capacity.

Stabilizing homebuilding at the upper end of the cycle would be easier to manage. Federal mortgage-finance institutions, such as the Federal Home Loan Bank Board and the Federal National Mortgage Association, can take many steps to reduce mortgage lending when homebuilding reaches excessively high volumes.

Local government and land costs

Government policy has also contributed to the rapid growth of another cost component: land purchase and development. Since the late 1960's, suburbs have become increasingly resistant to growth and have found new and powerful ways to discourage it. Following the earlier reliance on zoning and subdivision regulations to limit new development, many communities have advanced to such potent techniques as restrictions on sewer and water connections, ceilings on the number of building permits to be issued, special coastal zone regulations, measures to block the sale of farmland for development, and complex environmental reviews that give opponents many channels for stopping homebuilding.

These growth controls are operating in many parts of the country. According to a survey by the Department of Housing and Ur-

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ban Development, no fewer than 815 communities, spread through 35 states and 132 of the country's 272 metropolitan areas, have had sewer-connection moratoria since 1968. Most of the new controls reduce the supply of land available for homebuilding in the communities where they operate. Homebuilders have fewer sites available to them with utility services, and the owners of those sites where housing is still feasible are able to charge a premium for them.

Further, many growth controls raise the cost of site development as well as purchase. Some do it by imposing special "hook-up" or connection charges for the use of utility systems, streets, and schools, sometimes amounting to several thousand dollars per house. Special requirements for preservation of extensive open space, more demanding specifications for streets and utilities, and delays resulting from new regulatory processes also add to land development costs.

The declared purpose of most of these regulations is to improve the environmental quality of the community at large. Yet the community at large does not pay most of the costs: The new homebuyer pays the bill instead. If the environmental benefits are important, government should find a more equitable way to pay for them.

In many cases, however, the environmental benefits are not very evident. Many people who earlier opposed growth out of concern for its effect on the local tax base, or its possible lowering of the community's prestige, now do so in the name of environmentalism. The current generation of young families is arriving in the suburbs at a time when there is great hostility to homebuilding, sometimes for principled reasons and sometimes for purely selfish ones.

The restrictive policies that result are not federal but local. Still, federal agencies are involved and do have leverage. Federal grants for environmental-quality studies as well as for community development and planning help pay for the technical staff who devise and recommend growth controls. The Federal government could, as a minimum, perform an educational and leadership function. It could also go further. A few years ago, the Federal government had some success in prompting local governments to modernize their building codes. This time, it should aim at moving the suburbs toward methods of environmental protection that do not victimize the middle-income family looking for a home.

The issue is cost

Most recent federal housing initiatives have tried to help people who could not afford good housing at market prices by offering

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one or another type of subsidy on their behalf, but not by trying to reduce the cost of housing. (Similarly, Medicare and Medicaid were designed to help people pay their medical bills but not to address the size of those bills.) During inflationary times, however, some rethinking is in order, and there are precedents for federal action to contain housing costs. A federal effort to stabilize wage settlements in the building trades during the early 1970's, under John Dunlop's leadership, produced impressive results. And the ill-fated venture to bring new technology to the housing industry at least succeeded in directing attention to homebuilding costs as a legitimate public-policy issue.

In 1971, when the last wave of federal housing-subsidy programs was moving into high production while inflation was beginning to make its mark on housing prices, one federal report concluded: "Clearly, the public interest demands that the Federal government not stand impassively at the cash register and continue to pay out whatever is necessary to feed runaway inflation of housing costs." That conclusion applies today, when housing problems have begun spreading upward to affect middle-income America. Government should try to help solve the problem of rising costs, and the first step should be to replace those public policies that are now making the problem worse.

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"Child care": the fiscal time bomb

B. BRUCE-BRIGGS

THAT government should provide "day care" for a nation's children does not evoke the kind of natural assent that, say, providing care for the handicapped does. After all, the traditional day-care providers, called "mothers," have high incentives and the necessary skills (or so it has always been assumed), and are available in adequate numbers. So it is not surprising that government-provided day care should be one of the more controversial issues of social policy.

Though government-sponsored day care is not a new idea in America, the present interest in it surfaced in the mid-1960's, as a response to the sharply increasing welfare rolls. Since officialdom—largely as a result of court decisions and administrative reforms—had given up trying to track down the fathers of welfare children, attention shifted to the mothers. According to the conservative view, since the justification for Aid to Families with Dependent Children (AFDC) was that these women could not work because they had to be home caring for their children, the right policy was to provide child care and put the "brood mares" (Senator Russell Long's memorable term) to work. This attitude was part and parcel of the Work Incentive Program (WIN), now incorporated in our welfare system.

Sounds simple and practical, doesn't it? It can't cost very much

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to care for small children, can it? Well, it can. In Westchester County, New York, licensed group day care costs $40 a week per child. A welfare mother earning the minimum wage would be grossing $92 weekly. With two children, she (or the state) breaks even—i.e., she works for nothing. Worse, the federally mandated structure of welfare payments is such that it actually costs the state much more to put the woman to work than to keep her on AFDC. Nevertheless, the WIN program totters on—many millions of Americans apparently get a psychic return from symbolic gestures toward putting welfare recipients to work.

In parallel with WIN, or "workfare," developed a more positive program of the late Great Society—Head Start. This program emphasized education rather than merely day care, but the effect on the welfare mother was the same: She now had the "freedom" to work. Because there was well-documented evidence that children from disadvantaged backgrounds entered school with inferior cognitive skills, it seemed a desirable policy to give them additional educational aid to correct for their socioeconomic deprivation. This was a particularly acceptable concept because it involved "leveling up"—nothing (except a little tax money) would be taken from the prosperous, nor would their standards be debased. Indeed, the idea was that the techniques of early childhood education would bring poor children up to middle-class standards, making them intellectually and socially fit for the emerging society of racial and economic integration.

Head Start did not work out quite as well as most people had hoped. There was a short-term boost in children's learning skills, which quickly eroded after the third grade.[1] Never matter: Head Start still continues; roughly 400,000 children are enrolled in programs funded under Head Start.

Despite the considerably less than triumphant performance of Head Start, a broad coalition of socially concerned citizens, together with like-minded politicians led by Senator Walter Mondale and Congressman John Brademas, began a major push to extend the concept of "remedial services" for the disadvantaged to a broad range of services—health care, nutrition, assistance to handicapped children, as well as education. Together with day care, these fall under the political rubric of "child care." It certainly is an attractive concept. What could be more congenial to Americans and more po-

[1] This was the finding of the famous Westinghouse Study, released in early 1970. There has been an argument over some methodological aspects of the study, but its basic findings have been supported by further research.

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litically popular than concern about the welfare of children? An impressive program of services was offered by the Child Development Bill of 1971, which was vetoed by Nixon, and a package nearly as ambitious was promoted by Mondale and Brademas in the Child and Family Services Act of 1975, which did not get through Congress.

The title change between the 1971 and 1975 bills reflects an expansion in emphasis—not only children, but the American family itself was eroding, and government had to step in where fathers and mothers no longer cared to tread. Here is a useful summary of the problem:

> Forty percent of all marriages in America now end in divorce.
>
> In 1960, one of every 20 women giving birth was not married; today the figure is about one in eight.
>
> The extended family is all but extinct. According to one study, in 1900 in Boston half the households included parents, children, and at least one other relative. Today the comparable figure is 4 percent.
>
> One out of seven children, 8.6 million, live with a single parent, and we now have a larger percent of children who live in poverty than we did in 1970.
>
> About 350,000 children live in foster homes, at an average cost throughout their childhoods of $60,000. At least 100,000 of them could be adopted.
>
> Forty-five percent of the arrests for serious crimes are of young people under 18 years of age, and more than 90 percent of the children sent to correctional institutions last year were found guilty of offenses for which adults would not have been punished at all.
>
> The number of gonorrhea cases has tripled in the last 10 years among children less than 14 years old.
>
> Among young people aged 15 to 19 the second most common cause of death is suicide.
>
> And alcohol, drug abuse, and emotional problems are steadily increasing among both young people and adults.

In the meantime, another group appeared that was not much concerned with the fortunes of the traditional American family, but nevertheless had a great interest in the possibilities for government-sponsored day care/child care—the women's liberation movement. To the feminists it seemed an unfair burden that women should be saddled with the duty of child care. They saw no reason why the burden should not be transferred to government.

It has also been pointed out that although the typical image of the feminist is that of an educated upper-middle-class woman, most of the women who work outside the home are by no means in search of "self-fulfillment." Working mothers are a nationwide phenomenon; it follows that the need for some sort of child care to

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substitute for "mother care" is a national problem. Some of the numbers are startling: From 1948 to 1973, the percentage of working mothers grew from 18 percent to 44 percent of all mothers. Twenty-six million children (six million under six years old) have working mothers. Five million children live in single-parent families where the parent is in the labor force and out of the home.

And to deal with this enormous demand and need, there are now fewer than a million day-care slots for these six million children under the age of six. A large number of children are literally left alone during the day—unattended "latchkey" children. It would appear that, in the words of a day-care advocate, "the Norman Rockwell picture of Mom waiting by the back door at 3 P.M. with a fresh baked pie and milk does not exist in America today."

The preceding analysis of the need for more and better day care/child care is endorsed by a formidable group of national organizations—among them trade unions (the data regarding working women are from a 1975 resolution of the Executive Council of the AFL-CIO), especially the needle-trades unions and public employees; most church groups; practically all organized philanthropies that provide services for the poor; and organized women's groups, not just "feminists" but also broadly based organizations such as the National Council of Jewish Women and the League of Women Voters. The principal sponsor of child-care legislation is now the Vice President of the United States. And the detailed account of the family problem quoted above is from a speech by Mr. James Earl Carter (internal evidence suggests that it was based on materials provided by Mondale's staff).

The dubious cause

But the closer one looks at the arguments of these proponents of child care/day care, the more dubious their cause becomes. To begin with, as is customary in political debate, there has been some "creative" use of statistics. Yes, more women with children are now working than before. But a third of those women are working part time; and the Census Bureau found in 1974-1975 that a third of the full-time workers nevertheless took care of their own children. In addition, one study found that a quarter of working women had arranged their shifts with their husbands so that one of the couple would be home during the day. The upshot is that *four out of five American children are cared for by their mothers during the day.* Norman Rockwell's America still exists out there.

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And how do mothers of the other fifth manage? Eleven percent either have relatives in the home, or place the children in a relative's home during working hours. The death of the extended family has been greatly exaggerated. Grandma or Aunt Sally may be less likely to live in the house, but they tend to live nearby. The geographic mobility of American families is also exaggerated, and is to some degree an upper-middle-class perception. Suzanne H. Woolsey, formerly of the Urban Institute and now with the Office of Management and Budget (OMB), recently made this point very well:

> A policy-maker or academic who lives in Bethesda or Cambridge, with parents in Fort Lauderdale and a sister in Berkeley, is not predisposed to think of relatives caring for his or her children. It is easy to forget that for those who live in South Boston or Harlem a child's grandmother or aunt is more likely to be a few blocks away.[2]

And the rest of the working women? They hire someone inside or outside the home. There are neighbor women who are willing to take in children for a modest sum—sometimes even free. Many families hire housekeepers. The claim that there are only a million day-care slots for six million children under age six—children of working mothers—is a peculiar formulation of the issue. It amounts merely to saying that most children are not cared for in formal, licensed day-care centers. Oddly enough, one can read hundreds of pages of material on day care without encountering the term "nursery school"—though these care for over a million children for several hours a day.

Moreover, an impressive body of survey research strongly indicates that most women do not want their children in day-care centers, preferring more informal arrangements closer to home. This kind of data is always open to skeptical interpretation—people make do with what they must. And there is probably something to the claim of the day-care advocates that formal day-care centers would attract more trade if they were more aggressively supported. Nevertheless, the fact that mothers on the whole believe that their children are adequately cared for outside of day-care centers ought to make us suspicious of claims of a dire national need.

Now what of the "latchkey" children? Here, poll data—our basic source of information on the matter—will not help us much. How many mothers will tell a pollster that they leave their infants alone during the day? And those most likely to leave their children

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[2] "Pied-Piper Politics and the Child-Care Debate," *Daedalus* (Spring 1977).

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alone are least likely to be home to respond to a poll. The Census study referred to above estimated that 20,000 American children aged three to six were left unattended. (Given the sample size, this only means that the Census was able to find a dozen women who would admit to leaving their children alone during the day.) One suspects that the real numbers are larger. But are they large enough to justify a national program that will sweep up millions of children into the day-care net?

Despite some necessary weakness in the data, as near as I can tell, all the serious policy research on day care refutes the position of the day-care advocates. I cannot improve on Meredith A. Larson's summary of the studies available in early 1974:

> The first assumption under examination holds that there is an overall shortage of day care for preschool children and a shortage of preferred forms of service (especially center care) that will not be corrected through normal market mechanisms. Our review led us to the following conclusions:
>
> 1. The current national supply of day care for preschool children is approximately adequate to current demand, although disparities may exist at the local level, and the delivery system may operate poorly.
> 2. Most families in all income groups choose to have preschool children cared for in their own homes by relatives or friends, or in family-group care provided by relatives or neighbors.
> 3. Both new entrants to and long-term participants in the job market appear to be able to provide adequate care for preschool children.
> 4. Contrary to expectations, the supply of at-home care has expanded in response to an expanding women's labor force.
> 5. No significant economic barriers to market entry exist except those imposed by effective demand. Local regulations, lack of information, and conflict among funding agencies may hamper local market adjustment, however.
> 6. The existing market in custodial services for preschool children appears generally able to meet effective demand during the next decade without substantial federal intervention.
> 7. The biggest problem for individual families may be the considerable time and effort involved in locating care, rather than the availability, cost, or quality of the care.
>
> The second assumption under examination holds that the present day-care market is inequitable for low-income families, who cannot exert their preferences because of the cost and limited supply of certain types of care (especially center care). Our review led us to the following conclusions:
>
> 8. Most low-income or minority families make approximately the same choices about day care as do middle- and high-income families. They choose to have preschool children cared for in their own homes by friends or relatives, or in conveniently located family-group-care situations provided by relatives or neighbors.

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9. The supply of at-home care has expanded in response to an expanding women's labor force among low-income families.

10. The increased utilization of at-home care may actually represent a comparatively "expensive" though economically rational choice for low-income parents because of the loss of income of the family member who provides unpaid child care. This may imply that at-home care is a much desired choice for these families.

11. Because of the size and form of current federal subsidies, the market structure for child services may create far more compelling incentives for low-income families to use center care than for middle-income families to use center care. This may be a principal reason why use of center care by low-income families is higher than use by high-income families.

12. About 15 to 20 percent of low-income families now use or would like to use center care. There is some evidence to suggest that this percentage would not be substantially increased by providing additional information or assistance in locating available center care.

13. The existing national supply of center care appears adequate to meet current demand by low-income families, although there may be some local disparities.[3]

A national scandal?

Why then does the day-care establishment claim that American child care is a scandal? Until very recently, the argument was that only organized day-care centers meeting "standards" could offer "quality day care," and that anything less would be "harmful" or "injurious." The Federal Interagency Day-Care Requirements of 1968 specify the following staff/child ratios:

For children under 6 weeks old	1:1
For children 6 weeks to 3 years old	1:4
For children 3-4 years old	1:5
For children 4-6 years old	1:7
For children 6-10 years old	1:15
For children 10-14 years old	1:20

These ratios are presently under a Congressional mandate for review by the Office of Child Development (OCD) of the Department of Health, Education, and Welfare. I am reliably advised that these 1968 standards were arbitrary. Moreover, the most aggressive lobby in the day-care area, the Child Welfare League of America, is recommending the following staff/child ratios:

[3] "Federal Policy for Preschool Services: Assumptions and Evidence," Stanford Research Institute Research Memorandum EPRC 2158-24 (May 1975). The National Council of Organizations for Children and Youth, the umbrella child-care lobby, made a crude attempt to have this study suppressed.

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For "toddlers"	2:4	(1:2)
For "infants"	2:5	(1:2½)
For children 3-4 years old	3:12 to 3:15	(1:4 to 1:5)
For children 4-6 years old	3:15 to 3:20	(1:5 to 1:6⅔)
For children 6-14 years old	3:25 to 3:30	(1:8⅓ to 1:10)

The ratios in parentheses represent my calculations. The Child Welfare League does not like to present direct staff/child ratios because they might be "misleading." Apparently, the League is committed to a team-teacher approach. Some people certainly might be misled by comparing the recommended ratio of fewer than 10 school-age children per staff member with the ordinary school class of more than 20 students to one teacher.

The day-care establishment also insists upon certain strict fire and safety standards in buildings, and the provision of compulsory medical service. On the whole, the demand is for better services than the average middle-class child receives at home. But the main cost is always staff, which runs the price up considerably. New York State pays $40 a week per child for day care, upstate. The State Department of Social Services is laboring mightily to cut New York City's weekly costs from $75 to $65 per child—roughly the costs of the swankiest nursery schools in Manhattan.

Estimates vary, but there seems to be a general acceptance of OCD estimates of $1,862 per child per year for "acceptable quality" care, and $2,320 for "desirable" day care. These costs are in 1967 dollars; increasing 75 percent for inflation over the past decade gives 1977 prices of $3,250 and $4,000. A simple "back-of-the-envelope" calculation—applying these figures to Census Bureau and Bureau of Labor Statistics data for children of working mothers, and assuming 80-percent utilization—renders an annual bill of $15.6 billion for the "acceptable" level and $19.2 billion for the "desirable" level of day care. Providing after-school care for children aged six to 14—as the day-care advocates also recommend—adds roughly another $10 billion (for 13.5 million children at a 65-percent utilization rate). This calculation is consistent with the estimate of $25 billion that I have been advised the Congressional Research Service made for the Senate Finance Committee.

Actually, if the day-care advocates are right and there is a huge implicit demand for day-care centers, the utilization rates might be even higher than the estimates above. There will certainly be strong incentives to use these day-care centers; moreover, more women would be attracted to the labor force, or driven into it by higher taxes. The more advanced day-care advocates are already

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talking of vacation and evening care. It is understandable why Andrew Hacker has called day care a "fiscal time bomb."

The federal government is currently spending roughly $1.5 billion per year[4] on day care for roughly a million children, so the average annual cost per child is about $1500. Not all the services provided by these expenditures meet the federal day-care requirements; during Congressional debates in 1976 it was estimated that an additional $200 million annually would be needed for full compliance. State and local governments at least match the federal expenditures. (These estimates are rough because day-care costs are divided among the budgets of more than a dozen different agencies, from the Appalachian Regional Commission to the Small Business Administration, and not even OMB knows exactly how much is being spent.) Today, the average household is paying roughly $45 per year in taxes to support day care. A $25 billion program would run the average annual tax per household up to $350. Such taxes would fall on families without children *and* families where the mother was home caring for her own children. This would constitute an effective tax on active motherhood; supporters describe it as a "pro-family policy."

"Quality" care

An ambitious federal program for millions of children would be less fiscally appalling if the costs were lower. We have already noticed that most working women are now caring for their children for considerably less than $4,000 per year. Why are such high costs considered necessary? Day-care advocates say anything less is "damaging." But how do they know that?

Here is their reasoning: Although early day-care advocates claimed that the benefits of concentrated quality day care would be better than "mother care," especially for children from deprived backgrounds, the research that has been done in the field follows what we may call "Coleman's Law": Measurable outputs have at best a tenuous relationship to measurable inputs. At one extreme, researchers now find that "concentrated quality day care" is the

[4] Plus another half billion in "tax expenditures" for child-care deductions, principally of benefit to middle-class families. The existing federal standards for day-care subsidies also provide potential benefits to the prosperous—full subsidies are authorized for families who make up to 80 percent of the local median family income, and partial subsidies for up to 115 percent of the median family income. In New York City, families making $16,000 a year can get subsidies of $25 per week.

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same as "mother care." At the other extreme, it is generally agreed that children's development is harmed if they do not get enough personal attention. (If you put too many children in with a single staffer, she is obliged to devote all of her time to dressing, feeding, and answering "emergencies," and has no time to give the children individual attention.) But there seems to be no evidence to support any of the staff ratios—and therefore the costs—demanded by the day-care establishment.

Unfortunately, the research on effects of early-childhood-development programs seems to leave a good deal to be desired. There are only a handful of studies, which deal with very small numbers of children. The usual methodological problems of controlling for family background, motivational factors, and the "Hawthorne effect" are compounded by difficulties in measuring the intellect and personality of pre-literate children. One central issue—the effects of institutionalized care on children's attachment to their parents—seems particularly elusive. Whether one believes the studies in this area depends largely on one's acceptance of such instruments as the Illinois Test of Psycholinguistic Abilities, the Peabody Picture Vocabulary Test, the Griffiths Mental Development Scale, and other indicators that are largely based on observations by researchers who, however carefully trained and motivated, must make somewhat subjective evaluations.[5]

As in so many other areas of social policy, advocates will resort to specious foreign examples. Day care is particularly well developed in Scandinavia, Eastern Europe, and Israel. Approximately 75 per cent of Swedish infants are now in professional day-care centers. Day care has long been part of the Eastern European socialist system. Occasionally, American researchers have ventured across what used to be called the Iron Curtain and reported what they found there. The most widely publicized study, by a psychoanalyst, was negative, apparently reflecting his distaste for the psychological theory prevalent in the socialist states. In any event, he had the wit to notice that East German directors of day-care centers did not place their own children in day-care centers.[6]

The Israeli example is much more interesting. Claims have been made for and against the effects on personality of the famous kib-

[5] There is a useful summary of the research in this area by the Nestor of child development, Urie Bronfenbrenner of Cornell, in National Research Council, *Toward a National Policy for Children and Families* (Washington, National Academy of Sciences, 1976).

[6] The most aggressive American day-care lobbyist let slip that his children were cared for by a housekeeper.

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butz "children's houses," which care for children day *and* night. An Israeli-American sociologist advises me that because only half of the kibbutzim now have children's houses, a team at Hebrew University was able to make a comparative study of the two types of child rearing. It found no significant difference in personality and character between the two groups of children.

Of course, most of this research was not available when the day-care establishment was originally making its claims that anything but "quality" day care was "damaging." Nevertheless, advocates continue to make a concentrated effort to discourage alternatives to day-care centers. Their principal weapon has been licensing. The official position of the day-care establishment is reflected in a model "state day-care-facility licensing act," which would require the licensing of any person who cares for a child outside its home without being related to its family.[7] In other words, a neighbor woman who takes care of a child on a regular basis, whether paid or unpaid, would have to be licensed by the state under penalty of fine or imprisonment. New York State today requires the licensing of anyone—*including* relatives—who cares for more than two children. If you live in New York and your mother, aunt, or sister cares for your three children in her home, she is breaking the law. Most states distinguish between family day-care homes and group day-care centers, with the criterion being the number of children in care (usually about six). Another criterion is whether the day care is provided in the proprietor's own home; if not, it comes under the regulations for a day-care center.

All this can have extremely discouraging effects on day-care entrepreneurship. Let me present an example. Most of the clerical staff of the Hudson Institute are married women with children. Several of the mothers with very small children wished to organize an arrangement under which they would take turns caring for all the children. The Institute's campus has more than adequate facil-

[7] The text of the model licensing code provides that "no person" shall provide day care without licensing—i.e., grandma can go to jail for taking care of her grandchildren in her own home without a license. When I called this to the attention of the person who submitted the act as evidence before a Congressional hearing, she said she had not read it. The leading personality on the committee that wrote the code denied that it said what was written; after I sent a photocopy to his superior, he then told me that it was a mistake, that there was no intention of requiring the licensing of relatives, because it would not be acceptable to the public. Although he did not send the minutes that he claimed would support his statement, I am willing to give him the benefit of the doubt.

The "incorrect" text of the model licensing code was entered in the Congressional Record by Senator Mondale in May 1974. Apparently, I was the first to notice its wording.

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ities for such an operation. Unfortunately, I was researching this article when the idea came up, and was obliged to advise the administrators that such an arrangement would constitute a "day-care center" under New York State law, and that the Institute would therefore be obliged to be licensed. The relevant regulations fill a 25-page pamphlet. They are commendably worded, with no bureaucratic fat. Here is what is required merely to *renew* a license for a day-care center:

1. Completed application for renewal of permit.
2. Reports from local fire and health departments of approval and inspection performed within the preceding 12 months. Boiler inspection and approval within preceding 12 months. Records of monthly fire drills held within preceding 12 months.
3. Copies of menus for snacks and meals served during a recent four-week period, showing review by a nutritionist. If meals are not prepared within the center, describe food service arrangements.
4. Personnel changes in preceding 12 months, résumé on new employees, including age, education, and experience, hours of work, and job assignments of all staff.
5. Staff development: schedule and program for in-service training and use of outside training resources for the coming year.
6. When transportation is provided by the center, evidence of approval and recent inspection of vehicle and compliance with all rules of the State Department of Transportation.
7. A 12-month budget shall be submitted showing anticipated income and operating expenses, which shall include salary items for all personnel. Form DSS-1993 (Annual Day-Care-Center Budget) is required for centers from which local social-service commissioners purchase service, and is optional for other centers. Where the use of public funds is indicated, written confirmation of source of income will be required.
8. Description of health-care and emergency-treatment plan in operation as outlined in the department's rules and regulations. Indication that completed and current annual medical forms for all staff and children are on file in the center and available for inspection.

Prior to renewal, the department shall conduct a review, including a visit and inspection, to determine compliance with department regulations.

The New York State regulations for operating a family day-care home with fewer than five children are much thinner—the equivalent of six pages. Almost all of these are unexceptionable[8] regula-

[8] There are a very few peculiarities: New York prohibits the use of basement family rooms. Minnesota regulations specify that "family day-care [FDC] homes that have pets shall provide evidence that such pets have had all necessary shots; FDC homes shall not have turtles, chickens, or ducks as house pets." (But shots for people are not required!)

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tions requiring facilities that most people would have in their homes anyway, but the net result is to discourage people from trying to get a license. In effect, a house must be licensed to assure that it meets the state's standards as a home.

The traditional American response to over-regulation is, of course, black marketeering. It has been estimated that perhaps 3 percent of family day care is licensed. The American people simply do not bother with all the bureaucratic rigmarole. As a consequence, however, the dissemination of information regarding the availability of day-care service is inhibited. One can understand the complaints of many day-care advocates that women have difficulty in finding appropriate facilities.

Since the policy analysts have displayed conclusive evidence that most American women prefer and employ family day care, the day-care establishment has shown growing concern for the welfare of family day-care operators. Activists now want to see to it that family day-care providers are "trained" and well paid. Such concern would have the effect of pushing up the cost; a day-care lobbyist advised me that "good" family care would be even more expensive than group day care in centers.

The day-care crusade

Given America's concern with children, the large numbers of families with a direct interest in the provision of day care, and the formidable organizations supporting child-care legislation, why is it that federal support for day care has been so slow in developing? We should not be so naive as to credit the research findings of policy analysts that refute the position of the day-care establishment; the reasons are quite otherwise.

First, the day-care lobby has suffered serious internal divisions. The proprietary day-care centers, which now care for roughly 40 percent of all children in group day care, are vigorously opposed by the nonprofit child-care institutions. The latter claim that profit makers will destroy children by cutting costs. The nonprofits were especially agitated five years ago when there were some attempts to organize franchising systems in day care—characterized in a much quoted *New Republic* article as "Kentucky Fried Children." But there is no recognition of the role of the profit system in *controlling* costs. For example, a New York nonprofit day-care center proudly told the *New York Post* in 1976 that it had recently paid $127,000 for redecoration.

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Another division is among the nonprofits. The main body of the day-care establishment is drawn from the long, uplifting American tradition of philanthropy among upper-class women. Most of them are of old Yankee stock or long-established Jewish families. Out of the poverty programs of the 1960's, however, appeared a new group of social-service activists—the various anti-poverty operatives, mostly drawn from minority groups. These people wish to get in on the research grants, operating funds, and administrative jobs. With the end of the "youth" programs, the decay of the Community Action Program, the shutdown of Model Cities, and the tightening of the methadone programs, they need new sources of funding. They typically insist upon "community participation," and are opposed to high educational and training standards for center workers recommended so strongly by the philanthropic establishment.

Other groups are the state education and welfare departments. Most of the existing and prospective providers of day care want federal money to be delivered directly to them at the local level. Of course, this would be an administrative and probably a fiscal nightmare, requiring at the very least a huge bureaucracy to maintain even minimum controls. The state welfare departments make the obvious case for channeling funds through the existing system. But the day-care providers, knowing themselves to be high-minded people, apparently resent the notion that they need any kind of supervision.

In the mid-1970's, a formidable new competitor for control of day care appeared—the school teachers. One need not be a cynic to note that concern for day care among teachers surfaced at a time when declining school enrollments were leaving hundreds of thousands of trained teachers unemployed. The teachers' position was forthrightly stated by Albert Shanker, President of the American Federation of Teachers (AFT), who advocated "a system of universal day care, child care, early childhood education, an entire package of services, both universal and free," funded by general taxation under the "prime sponsorship" of public schools. How serious Mr. Shanker was about this proposal I cannot say, but he was certainly taken seriously. When he appeared before a Congressional subcommittee on child care, the somewhat desultory proceedings became earnest: He was a person of consequence. The day-care establishment was thrown into a tizzy. Perhaps they were afraid that they could not stand up to a tough-minded operation like the AFT—if so, I suspect they are right. Perhaps it is necessary, even desirable, that people who are concerned with children be

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"tender-minded," but they might be characterized as being much too soft-headed for the hard world of Washington.[9]

Against the day-care establishment is arrayed an odd coalition. The mothers who are caring for their own children—who have the most obvious interest—are not directly represented in the political process. Acting as their proxy is a small but highly vocal group of women who, instead of being from mainstream Protestant or secularized Jewish backgrounds, tend to be active Roman Catholics or fundamentalist Protestants. Unlike many of their philanthropic counterparts, they have no economic or professional interest in the day-care issue. They seem to be motivated entirely by ideology, defending traditional ideals of family life and the "holy calling" of women in child rearing. These are the same women who have been fighting abortion and the Equal Rights Amendment. Their concern arises in part from the tone of the social-welfare establishment, which reveals an implicit commitment to contemporary forms of secular humanism, to the view that children should be happy, cooperative, uncoerced, and universalist in outlook (New York and Minnesota day-care licensing regulations prohibit corporal punishment and other sanctions ordinarily applied by most parents).

The political spokesmen for the "pro-family" interests are the most conservative Congressmen. It was a staff aide to Senator James Buckley who began the opposition to the Child Development Bill of 1971 that led to President Nixon's veto. The 1975 Child and Family Services Act was overwhelmed by a barrage of hostile mail generated by an organized campaign through the fundamentalist churches. Proponents and opponents of day care have not been able to determine who began this campaign. At its peak, 5,000 letters a day poured in to Senator Mondale—more than on abortion, gun control, and Vietnam combined. Conservative political operatives advise me that no known organization on the Right can produce this volume of mail.

Co-belligerents (not allies, because there seems to be little or no contact) of these people include policy analysts inside and outside the government. To a large degree, they seem to take a "neo-conservative" stance toward new governmental social programs. Another position in opposition to day care is held by a scattering of individuals who identify themselves as "liberals," but have traditional views regarding the family. They tend to be highly educated

[9] The ineptitude of the day-care lobby is a principal theme of Gilbert Y. Steiner's *The Children's Cause* (Brookings Institution, 1976). In my view, he is much too polite.

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people who, I suspect, do not trust the child-development experts to care for their children or anyone else's. Many psychologists and psychiatrists are in this group.

The "hidden agenda"

In addition to the visible issues at stake, there are also some elements of a "hidden agenda." In my view, one of the reasons so many social workers are sympathetic to the day-care movement is that they do not believe that poor families, especially poor black families, are capable of providing their children with necessary guidance and care. This may be true for some of those families. But how do you identify the unsatisfactory mothers? And what do you do if they do not wish to send their children to day-care centers?

Even if institutionalized care were better than care by mothers for some children, erecting a colossal day-care complex would be a singularly inefficient means of getting at this small minority. The best explanation for the growth of the day-care movement is the most obvious: The beneficiaries of a federal effort in the area of child care are the child-care providers—social workers, specialists in early childhood education, teachers, nurses, dieticians, and public-sector entrepreneurs and administrators. Staffing day-care centers merely for the children of women now in the labor force would require the creation of three million jobs. In the 1975 hearings on the Child and Family Services Act, Senator Mondale let the number "45 billion [dollars]" slip. Having labored for a century to uplift the poor, the organized philanthropy of America now wants to rejuvenate itself from the government trough. We have come a long way from Hull House.

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The false dawn of the sunset laws

ROBERT D. BEHN

EVERYONE knows at least one government policy, program, or agency that should be terminated. For some, it is food stamps; for others, section 14(b) of the Taft-Hartley Act; for still others, the Occupational Safety and Health Administration. Many people can produce long lists of inefficient, obsolete, duplicative, and unproductive—if not thoroughly bad—programs that are candidates for termination. Consequently, the idea of a "sunset law," a "bill to provide for the elimination of inactive and overlapping Federal programs," is bound to attract much support.

The sunset law has become Washington's latest fad. Common Cause backs it, as does the United States Chamber of Commerce. Eric Sevareid supports it, as do *The Washington Post* and *The Washington Star*. The Democratic Party platform was "committed" to it, and President Carter endorsed it during his campaign and in his first "fireside chat." Last year, the Senate bill had 55 co-sponsors —including Senators Goldwater and McGovern, Eastland and Kennedy, Helms and Percy—and in the House the list numbered over 100. Moreover, some states have already passed sunset laws—first Colorado, and then Florida, Louisiana, Alabama, Georgia, Montana, Utah, Arkansas, Indiana, Oklahoma, Connecticut, Hawaii, Nebraska, New Mexico, Tennessee, and South Dakota. At least a

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dozen other states are considering legislation. One journalist said the sunset law "would amount to a revolution in Congressional procedures"; another called it the "hottest political idea of the year."

The idea of the sunset law is that every government program should periodically terminate, and continue only after an evaluation and a legislative vote to reestablish it. The objective is to replace the assumption that every program automatically continues unless there is a vote to terminate it, with the assumption that every program automatically terminates unless there is a vote to continue it.

The notion of placing a statute of limitations on government programs is not new. When he was chairman of the Securities and Exchange Commission, William O. Douglas frequently told President Roosevelt that regulatory agencies should last only 10 years. In *The End of Liberalism,* Theodore J. Lowi proposed a Tenure-of-Statutes Act to provide for automatic termination. The idea has been incorporated into several Congressional proposals. A few years ago, Representative Wilbur Mills and Senator Mike Mansfield introduced legislation that would automatically terminate a number of tax deductions over a three-year period unless Congress voted to reinstitute them. More recently, Representative Abner Mikva proposed a Regulatory Agency Self-Destruct Act, and Senator Gary Hart proposed a Federal Agency Pilot Termination Act. Senators Charles H. Percy, Robert C. Byrd, and Abraham Ribicoff have a similar (if less exotically titled) bill that would terminate all regulatory activities over a period of eight years.

The idea attracted little attention, however, until the Colorado chapter of Common Cause christened the automatic-termination concept "sunset," developed a bill for the periodic termination of 43 state regulatory boards and commissions, and organized an ideologically very diverse coalition of legislators that overwhelmingly enacted the first sunset law. One columnist called the Colorado bill "the freshest and possibly most significant law of the 1970's."

In Congress, Senator Edmund S. Muskie has introduced the bill that is now the focus of attention. Last year, it was approved by Muskie's Subcommittee on Intergovernmental Relations and by the Senate Committee on Government Operations, but was never considered by the full Senate. This year, Muskie introduced a new version of his bill, the "Sunset Act of 1977," with 42 co-sponsors. Then, early in the summer, the Senate Committee on Governmental Affairs amended the Muskie bill (extending the review cycle to six years), gave it a new name (the "Program Evaluation Act of

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1977"), and unanimously reported it out favorably. If Congress passes any sunset law, it will be based on the Muskie bill.

The rationales for the sunset laws are many. Most frequently cited is concern about the practice of incremental budgeting (examining only the additions to the previous year's budget rather than the entire budget for each program), which precludes any complete evaluation of a program and eliminates the threat of termination. Muskie's committee is also worried about "the growing number of uncontrollable and permanent programs," for which funds are authorized on a permanent and unlimited basis, further insulating them from review. Moreover, in some policy areas, numerous agencies are responsible for similar if not identical programs, while others pursue conflicting or contradictory goals. Consequently, sunset laws are designed to ensure meaningful program evaluation, to introduce the possibility of termination, to merge duplicative programs and rationalize program structure, and to eliminate conflicts and competition between programs. By shifting the burden of proof from those who would terminate a program to those who would renew it, the advocates of sunset laws hope to create an incentive for individual agencies, and the government as a whole, to improve performance.

The central feature of Muskie's and every other sunset bill is its "action-forcing mechanism": the automatic and periodic termination provision. The objective is to ensure that *every* program is regularly evaluated. Then, unless Congress specifically votes to continue a given program, it would automatically terminate. The sponsors of the legislation emphasize "the absolute neutrality" of their proposal, for all spending programs would be subject to the same review process and the same need to rejustify their existence —and thus to the same threat of termination.

Sunset goals and mechanisms

The Muskie bill calls for a "sunset review" of each program to determine "whether the merits of the program justify its continuation rather than termination," alteration, or continuation at a different budget level. Congress could not vote to renew a program without such a review. Moreover, programs with similar purposes are to terminate at the same time. Thus, argues the Governmental Affairs Committee, "Congress will be required to review the Federal effort in an entire program area at once."

Obviously, sponsors and supporters are enthusiastic about their

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idea of a sunset law. Senator Muskie calls it "imaginative" and "revolutionary," and thinks it will "lend a new element of discipline and cohesiveness to the way the Federal government handles the American taxpayer's money." John W. Gardner, former chairman of Common Cause, believes that a sunset law "could stand as a landmark in the history of government organization" and that it will "guarantee a periodic and comprehensive evaluation of existing programs and agencies." Senator William V. Roth Jr., the ranking minority member of Muskie's subcommittee and the principle Republican co-sponsor of the bill, believes that the legislation "is the most important and significant reform of this decade," and that it will "assure that effective programs continue and that ineffective programs be terminated."

These are certainly noble objectives. But good intentions are not enough. Public-policy proposals need to be evaluated in terms of the consequences of their implementation, not the intentions of their sponsors.

Reversing the assumption

Proponents of a Federal sunset law have compared it with the Budget Reform Act of two years ago, which has been successfully implemented. (Muskie is Chairman of the Senate Budget Committee.) Opponents have suggested that the planning, programming, budgeting system (PPBS) of the 1960's and the management-by-objectives process of the 1970's—both of which have been discarded—are the proper parallels. But instead of engaging in argument by analogy, it is more useful to analyze whether a sunset law would actually achieve its objectives. Will the enactment of a sunset law replace the assumption that programs should continue unless it is demonstrated that they need to be terminated, with the assumption that they should terminate unless it is demonstrated that they need to continue? Since a change in assumptions requires Congress to improve significantly its ability to evaluate programs, a second question is this: Will a sunset law result in a meaningful program evaluation? Finally, since the threat of termination is the action-forcing mechanism designed to compel evaluation and change, there is a third question: Is the threat of termination real?

Would a sunset law, as Senator Roth argues, "end the unspoken rule that money spent on a program this year must be continued or increased in next year's budget"? Implicit in this argument is

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the supposition of a direct link between formal budgeting procedures and informal budgeting assumptions. But changing assumptions is not merely a question of changing procedures. The same assumption can dominate a number of different budgeting systems, for there is an important distinction between a formal process and its practical implementation. A committee may be required to produce a statement of the consequences of eliminating and halving a program's budget, but that does not prevent it from concluding, for each of its programs, that disaster will strike the nation if the program is cut back, let alone terminated.

Determining how or whether an operating assumption can be changed requires examining why people make that assumption. Why does Congress use incremental budgeting? As Aaron Wildavsky has made clear, it is because of the incredible number of budgetary decisions to be made each year. There are so many programs that it is impossible to make a meaningful appraisal of ten different budget levels for each one. Consequently, Congressional committees focus their attention at the margin—on the size of the incremental increase.

Yet a sunset law would do nothing to decrease the number of decisions. Rather, Muskie's proposal would increase the workload by requiring for each Federal program an evaluation and decision about eliminating it. The more programs subject to formal, periodic review, the more superficial each individual evaluation will be—indeed, must be. Thus the more comprehensive a sunset law, the less likely that legislators will assume that each program is a serious candidate for termination.

Workload versus neutrality

At the Senate hearings last year, the most frequently raised objection to a sunset law was increased workload. Almost every committee chairman responding to the request by the Senate Rules Committee for comments on the Muskie bill replied that they fully supported the objectives of the bill *but* that the workload would be impossible. Senator Harrison A. Williams estimated that implementing the sunset reviews would require $1 million worth of additional staff for his Labor and Public Welfare (now Human Resources) Committee.

In response to the workload complaint, Muskie revised his bill to state explicitly that the evaluation of each program "shall be undertaken in the scope and the detail the committee having juris-

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diction deems appropriate." The Governmental Affairs Committee further revised the bill to establish a "two-track approach": Each committee would be required to undertake a sunset review of every one of its programs scheduled for termination and to select "a number of program areas among those subject to [sunset] review . . . for comprehensive evaluation." Yet as Senator Williams has observed, "All programs must be reviewed with close, evenhanded scrutiny. . . . To do less will compromise the neutrality upon which the bill so heavily depends." Thus emerges a major dilemma of the sunset laws: workload versus neutrality.

The Senate Governmental Affairs Committee has emphasized "the neutrality of the sunset process," but by permitting each committee to determine whether or not an individual program will be subjected to "comprehensive evaluation," it has seriously compromised this neutrality. Those who wish to protect a program from termination or change will vote to exempt it from serious evaluation. They can then argue later, "How can this program be terminated when it has not been thoroughly evaluated?" Thus the battles over termination will become battles over the scope of evaluation.

In an effort to ensure neutrality, Muskie and his committee have rejected the suggestion that the sunset mechanism be phased in slowly over several years. Common Cause and others have emphasized "the learning process" involved in the implementation of any new government program, including sunset laws. But Muskie notes that "pilot testing would inevitably require selecting out certain programs or agencies for the initial trial runs." This, Muskie believes, "would jeopardize the principle of neutrality, thereby conceivably making the process politically unworkable."

The sunset laws of Colorado and eight other states apply solely to regulatory agencies. Similarly, it may be possible to devise a limited federal sunset experiment that will not strike too many Congressional fiefdoms as obviously unfair. But the question of workload versus neutrality is truly a dilemma. Any effort to introduce flexibility to relieve the workload will automatically open the process to manipulation. And incremental budgeting will not be eliminated by increasing the workload.

The parts versus the whole

During last year's hearings, several witnesses suggested two major difficulties with program evaluation. First, most programs are

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instituted without a clear statement of objectives. Indeed, to get a new program adopted it is often necessary to build a coalition of people and groups with divergent and sometimes contradictory goals. Yet the task of evaluation cannot begin until a program's objectives are defined. Second, the art of program evaluation is not very highly developed. In most cases it is simply not possible to determine whether a missile is deterring Soviet expansion, whether a new health regulation has reduced mortality or morbidity, or whether a new juvenile-corrections program has reduced recidivism. So many factors influence most social systems that it is often impossible to isolate any single cause-and-effect relationship. Examples of irrelevant, misleading, and dishonest evaluations abound; models of useful evaluations are few.

Advocates of the sunset law argue that it will help improve evaluation skills. Yet even if all could agree upon program objectives and if the methodological problems disappeared, it is doubtful that a sunset law would improve the effectiveness of evaluations. After all, the committee examining each program is sympathetic to the program's basic rationale. Do we really expect that the agriculture committees will produce evaluations recommending the elimination of farm subsidies, or that the veterans' affairs committees will conclude that veterans' benefits should be terminated?

The responsibility for implementing the Budget Reform Act was concentrated in the members of the House and Senate budget committees. They were determined to make it work. But the responsibility for implementing a sunset law will be dispersed among all the legislative committees, and there is little reason to believe that the committee chairmen or members will be dedicated to the principle of evaluation, particularly when it infringes upon their favorite programs.

During last year's hearings, George Shultz, former director of the Office of Management and Budget, was quoted as saying: "The budget process was a fight of the parts against the whole and the parts always won." Yet a sunset law would do little to dilute the power of the parts. It is still the committees and the interest groups against the whole.

Recognizing this problem, Common Cause has argued that "substantial committee reorganization, including adoption of a system of rotation of committee members, is a prerequisite to effective sunset oversight." Yet none of the Congressional sponsors have suggested such a provision. The reason is obvious: It would doom any bill.

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The fate of the recent plan to reorganize the Senate committee system illustrates this problem. The Temporary Select Committee to Study the Senate Committee System proposed that the number of committees be reduced from 31 to 15—though it carefully avoided proposing reorganization of any of the Senate's fiefdoms. Still, the senior members of the committees to be terminated and their clienteles vigorously objected. The veterans were particularly vociferous, and the Senate Veterans Committee was not abolished. (Senator Jacob K. Javits observed, "You could destroy all your reorganization if you're going to take the veterans on.") Any effort to deny ranking Senators their positions of power by rotating them to a new committee would similarly destroy any sunset bill. Who will suggest to Senator Russell B. Long that he be rotated out of the chairmanship of the Senate Finance Committee?

Consequently, the sunset review of any program will be undertaken by a committee biased in its favor. The required review will be produced, but writing the document can be assigned to an intern, who can paraphrase the language used in another evaluation, or look up what was said five years ago.

How serious is the threat?

"The threat of termination," notes Common Cause, "is the centerpiece of sunset." It is "an action-forcing mechanism to break through the apathy and capture the attention of the bureaucracy and Congress." Evaluation, oversight, rejuvenation, consolidation, revision, and improvement of federal spending programs rather than termination may be the immediate objectives of the Governmental Affairs Committee's bill, but the automatic-termination provision is still the means for achieving these goals. As it states in its report, "The Committee believes that this action-forcing mechanism is the single strongest incentive for insuring that the new process is taken seriously." But how serious is the threat of termination?

According to its advocates, Colorado's sunset law invigorated the State Board of Shorthand Reporters, which was on the list of agencies to be terminated at the end of June 1977. The board administered a test to determine who shall be admitted to the guild of shorthand reporters. (Members can charge a higher fee for their services.) During 1975, only three of 84 applicants passed the test, but after the adoption of the sunset law, the board miraculously found that 22 of the next 43 applicants met their standards. The moral is supposed to be that the threat of termination significantly

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improved the performance of this agency. (The board has since been eliminated, but its testing responsibilities have been transferred to the Judicial Department.)

But does anyone seriously think that the F.B.I., the Bureau of Prisons, the Federal Aviation Administration, the Internal Revenue Service, or even the Postal Service will be terminated? It could be argued that these agencies suffer from ineffective or inefficient administration, but few would conclude that this requires their termination. Most agencies or programs will simply not be serious candidates for termination, and no new budgeting process or evaluation system can reverse that assumption.

A new sunset law may force a few egregiously wasteful agencies to improve their behavior. There may be a few fights on the floor of Congress over the renewal or termination of some programs. There may even be an effort to make an example of a few more vulnerable programs by ceremoniously terminating them. But after an initial period of uncertainty and suspense, interest groups, agencies, and Congress will learn how to manipulate the new system. Unless a program with a strong clientele is actually terminated, everyone will soon realize that termination threatens only the weak. Sunset laws seem like a very expensive procedure just to revise or terminate those few programs that everyone accepts as unnecessary. Is this the most efficient way to shake up the boards of shorthand reporters?

Numerous programs do, of course, terminate periodically and automatically. A significant portion of the defense budget is both authorized and appropriated annually, and many domestic programs are authorized for only three or four years. In the past, statutory authority for the military draft periodically expired, but this did little to force its termination; although Congress did not vote to renew legal authority for the draft when it lapsed in June 1973, President Nixon had, in effect, terminated the draft by simply halting inductions. And the nation's debt ceiling, which is permanently set at $400 billion, must be periodically if "temporarily" reauthorized (the national debt is now over $600 billion and growing). This necessitates the recurrent Congressional charade of debating whether to extend and expand the debt ceiling, but it results in little serious consideration of terminating the national debt.

A periodic-renewal requirement does little to establish a presumption of termination. Are programs that must be reauthorized more likely to be terminated than those with permanent authorization? The Muskie sunset bill mandates evaluation precisely because a

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requirement of periodic renewal has resulted in little termination. Yet even when a periodic-renewal requirement is combined with evaluations concluding that the program has no impact, there is no serious threat of termination. The history of the Law Enforcement Assistance Administration (L.E.A.A.) provides an example.

The case of L.E.A.A.

Established by the Omnibus Crime Control and Safe Streets Act of 1968, L.E.A.A. and its program of grants to state and local governments was initially authorized for three years. In 1970, the agency was renewed for three more years. In 1972, the House Government Operations Committee issued a report criticizing L.E.A.A. for "inefficiency, waste, maladministration, and, in some cases, corruption," and concluding that its grants "have had no visible impact on the incidence of crime in the United States." That same year an attempt was made on the floor of the House to kill the $850 million appropriation for L.E.A.A. for fiscal year 1973; the motion was defeated 83 to 4. In 1973, L.E.A.A. was renewed for three more years.

In 1976, Congress again had to consider whether to reauthorize L.E.A.A.; in the meantime, there had been several more evaluations of its programs. The Twentieth Century Fund was highly critical of the agency; so were the Center for National Security Studies and the Mitre Corporation, both of which concluded that L.E.A.A. was accomplishing little and should be abolished. According to the Center for National Security Studies, "the Federal government has greatly increased its expenditures to combat crime, but these expenditures have had no effect in reducing crime."

Moreover, L.E.A.A. had collected a clutch of Congressional critics. Senator Joseph R. Biden Jr. called it "an ineffective and wasteful agency." Representative Elizabeth Holtzman stated that it had "failed to have a significant impact on reducing crime." And Senator Edward M. Kennedy concluded that "the American people are not getting a fair return on their $4 billion." Still, in 1976, L.E.A.A. was reauthorized for three more years.

An examination not of the periodic-renewal requirement or the critical evaluations but of the nature of the program reveals why the agency was not terminated. L.E.A.A. distributes money to every state and most Congressional districts. Massachusetts Attorney General Francis X. Bellotti went to Washington to lobby on behalf of L.E.A.A. Bellotti not only met with his state's Congressional delegation, but also sent a personal letter to each Massachusetts Represen-

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tative, explaining the impact of any cutbacks on their individual districts.

Requiring that L.E.A.A. be renewed again in three years may open it to continued Congressional carping, but there is little serious threat of termination. After all, in Massachusetts alone, 1270 jobs are supported by L.E.A.A. funds. Having established L.E.A.A. "to assist state and local governments in strengthening and improving law enforcement," how can Congress now decide to provide no assistance at all? Who will vote to do nothing about crime? "You can't just throw out something like that," said Senator Kennedy about L.E.A.A. "I mean, you have to make sure it gets a fair test."

What it takes to terminate

Advocates of sunset laws reason that if Congress only had to undertake a real evaluation and make a real decision, a significant barrier to termination would be overcome. But the lack of evaluation and decision is only a small obstacle to termination. There are other more important factors that contribute to the durability of public programs and that a sunset law would do little to overcome.

Any government program has its own constituency: those who benefit directly from it and those who take a personal, if less selfish interest in it. The agency administering the program recruits and cultivates this constituency to ensure continued political support, for it can be relied upon to complain loudly, forcefully, and personally at any suggestion that the program be terminated.

Public-opinion polls reveal a pervasive unhappiness with inefficient and ineffective government, and the advocates of sunset laws suggest that this public mood can be transformed into political support for terminating inefficient and ineffective programs. But the only characteristic common to those who share this mood is a general unhappiness with government; if you ask precisely which programs are inefficient and ineffective there is little agreement. Moreover, people do not believe it inconsistent to declare: "Too many programs don't work and should be terminated. But not my program. It's a good one."

Again, it is a problem of the parts against the whole. People simply fight much harder to retain the programs that benefit them directly than to terminate those that are the source of their complaints. Consequently, it is difficult to focus general public discontent with government into concentrated opposition to any particular program. Yet to terminate a program means to defeat its benefi-

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ciaries and supporters, and this requires concentrated, not general opposition.

Any major change in a government program must be preceded by a change in the program's constituency. New people with new interests and new goals must be added to those who have already organized around the program. To terminate a program requires that its constituency be significantly enlarged. Well-organized groups specifically and vigorously opposed to the program must enter the small political arena where the real battles are fought and the real decisions made.

To mobilize this new constituency, the most effective termination tactic is to focus attention on the program's harm. Just because a policy is ineffective, inefficient, or duplicative, it need not be terminated. There are many less extreme remedies: better management, better personnel, increased funding, new approaches, reorganization, more legislative oversight. As Massachusetts Attorney General Bellotti argued about L.E.A.A., "just because the program is under criticism doesn't mean funds should be cut. Reform is the answer." And Representative Holtzman, arguing against a reduction in L.E.A.A. appropriations for fiscal year 1977, stated that "this cut will not improve its performance. . . . You do not improve a program by crippling its budget."

Moreover, it is difficult to organize a dedicated termination coalition around opposition to inefficiency and ineffectiveness. If it can be demonstrated, however, that the program is positively harmful, opposition is easier to mobilize. Those directly hurt combine with those concerned about the harm to form a natural and dedicated constituency. And if the program is harmful, termination is justified —indeed mandated. Those who would eliminate government programs would best concentrate their energies first on programs inflicting some demonstrable harm.

Showing that a program is harmful does not guarantee its termination, however; it merely makes termination politically possible. The most likely resolution of the controversy will be compromise, not termination. But if compromise is somehow precluded, the advocates of termination have gained a significant advantage. They can emphasize the program's harm, while its supporters must argue that the benefits exceed this harm. It is a stand-up fight, and the terminators have an opportunity to score a clean knockout.

For some programs there is no logical compromise. Either the country has a military draft or it does not; there is little to compromise about. Similarly for fair-trade laws and right-to-work laws:

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Either you have them or you do not. Such situations are not common, however; usually there is an entire spectrum of natural alternatives between dedicated perseverance and complete termination. But sometimes the public debate over termination becomes so polarized that compromise becomes politically impossible. Those who might mediate the conflict lose control, and everyone is forced to take sides.

A sunset law would do little to inhibit compromise. Indeed, since numerous programs would expire at the same time, there would exist many opportunities. Alvin From, staff director of the Senate Intergovernmental Relations Subcommittee, has argued that "it will be very hard for a committee to justify reauthorizing the Tea-Tasters Board or 228 individual health programs." Perhaps. The committee might be particularly reluctant to reauthorize the tea-tasters if Walter Cronkite ridiculed the board on the night before the committee votes. But it is not very likely that much public attention will focus on the tea-tasters vote.

Moreover, the supporters of health program number 1 will not seek to eliminate health program number 228—but to ensure its continuation. And, in return, the advocates for program number 228 will support program number 1. Last summer, for example, Representative James P. Johnson, who had been advocating the elimination of price supports for tobacco, decided not to offer an amendment to the omnibus farm bill to terminate that subsidy. It seems that sugar beet is one of the principle crops in Johnson's district and that a lot of Representatives from tobacco districts voted for the provision to establish price supports for sugar. "There was no direct connection between support for the sugar subsidy," says Representative Walter Jones, who chairs the tobacco subcommittee, "but indirectly we tried to reason with him [Johnson] that it would be better if all of us in trouble hung together rather than apart."

In addition, the tea-tasters have some friends, and this constituency is much more interested in preserving the board than in terminating any of those 228 health programs. Similarly for the friends of the health programs. So no matter whether the vote to renew the Tea-Tasters Board comes the same day, the same week, or the same month as the vote for 228 health programs, you will find many friends of the health programs voting to continue the Tea-Tasters Board—not because they want better-tasting tea, but because they do not want their favorite health program terminated.

Senator Muskie has argued that "each and every one of us [in

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Congress] will have to bite the bullet where our favorite programs and constituencies are concerned." More likely, each and every Congressman will be more worried about preventing others from biting his bullet. And to ensure that, he will be very reluctant to bite someone else's bullet. Muskie's sunset bill requires that similar programs be renewed at the same time. Such a provision can only encourage logrolling.

The prospects for termination

Behind the sunset movement is the desire to make government more efficient, more businesslike. But no business would merely establish a fixed schedule for evaluating each division and department. Instead, it would focus evaluation energies on those departments with the largest budgets and with the greatest potential for improvement and savings. Those in Congress who are serious about terminating programs should adopt a similar ad hoc approach.

No one can be against the *principle* of terminating ineffective and inefficient programs. But many will be against terminating any specific program. That is when the trouble starts, and a sunset law will do nothing to mitigate the difficulty. The testimony on the Muskie bill is striking in this respect: Although everyone applauded the neutrality of the sunset concept and praised the virtues of terminating useless programs, no one suggested a single program that might just possibly be a candidate for termination. To do so would have destroyed the wonderful, warm consensus that permeated the committee room. Every witness, liberal or conservative, had an opportunity to oppose waste and inefficiency without making any enemies. What could have been more rewarding?

Those who are serious about sunset laws should understand, however, that program termination is inherently a political process, not a bureaucratic one. New procedures cannot make it routine or automatic. To terminate a program is to deny some people long-held and, they believe, honestly-earned government benefits. They will fight back. Those who feel that the program merits termination will make antagonists—real enemies. That is not very rewarding. In theory, it may look easier for a Congressman to vote not to continue a program than to vote to terminate it. But when it comes time for the actual vote, no one will be fooled. The agency, the constituency, the press, and those in Congress will all know that they are voting to terminate the program.

One reason that few programs are terminated is that few efforts

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are made. Termination requires that someone do the hard work of mobilizing and enlarging opposition. Yet success is unlikely, and the rewards of success, in either personal satisfaction or political prestige, are few. Little wonder that few try.

If advocates of sunset laws know some programs that need termination, they should go out and terminate them. Nothing could do more to reverse the assumption that all programs automatically continue than to have a few well-dramatized examples to the contrary. This would also increase our knowledge of how other programs can be terminated. And this might reveal how to create incentives for more people to undertake the arduous task of termination.

The bill Muskie introduced this year included a provision to terminate the sunset mechanism itself after one review cycle. But the catch is that if the sunset mechanism does not work, it may not even terminate itself. The country could be burdened not only with all those inefficient, obsolete, and costly programs that the bill was designed to eliminate, but with a costly sunset program as well. The sunset law may not develop the extensive clientele that some programs do, but what about the Congressional aides and outside consultants who will make their living by evaluating programs? They too can always argue that the reason the sunset law has not worked is that Congress has not done it right—by not spending enough money.

Advocates of sunset laws point to the public's disenchantment with government. "Many people believe that government has overpromised but failed to deliver on its promises," says Senator Roth. Yet one reason that implementation has failed to match expectations is that in the hurry to establish a new program we do little thinking about how it might work. In the rush to solve the immediate crisis—and to demonstrate good intentions—those who counsel caution are usually ignored. The result is more programs with poor implementation, negative incentives, and multiple unintended consequences.

The irony of the sunset laws is that unless they are fantastically successful they will become just another example of unfulfilled governmental promises. We know less about policy termination than we do about poverty or pollution, yet we are determined to rush in with another new solution. "I don't think we can wait 4, 10, 15 years to make programs more efficient and effective," argues Senator Roth. Roth wants a "crash program"—a citizens commission to speed the process.

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At the Senate hearings last year, Representative James J. Blanchard, the principal House sponsor of sunset legislation, touched on the question of efficacy: "I do want to mention the only reason, or at least the only strong argument I have heard against the bill. . . . The reason simply is that it won't work." But Blanchard did not find this argument worthy of rebuttal, or even any further examination. He simply said, "I think we must try. I don't believe we can afford not to try this process."

A familiar argument: "We can't afford not to. . . ." But it is all those ideas we could not afford not to try that have produced the collection of "duplicative," "inefficient," "ineffective," and "obsolete" programs about which the advocates of sunset laws now complain. Many of those programs became law because the debate focused on intent rather than consequence. It is hard to argue that we cannot afford not to try to defeat international communism or cure cancer. Similarly, it is difficult to oppose a program designed to require the periodic termination of all spending programs, to improve their efficiency and effectiveness, and to terminate the obsolete ones. These are worthy objectives. There are serious questions, however, as to whether the sunset laws will accomplish any of these goals.

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Can policy research help policy?

MARTIN REIN & SHELDON H. WHITE

ONE of the most striking developments of the new and expanded age of social policy, which dates roughly from the Johnson years, has been the great expansion in policy research to guide policy makers. In 1974, the General Accounting Office (G. A. O.), on behalf of the Joint Committee on Congressional Operations, conducted a telephone survey of Federally funded program evaluations. This survey was based on only a narrow definition of policy research, because it excluded studies designed to assess the scope and trends of phenomena, as well as many planning activities. Nevertheless, the G.A.O. study found a 500-percent increase in expenditures from 1969 to 1974. About 60 percent of the 1974 outlays of $146 million, or close to $88 million, went for contract research, with the rest going for grants or in-house studies. About half of the contract-research funds went to profit-making organizations, 30 percent to nonprofit organizations, and 20 percent to universities.

In addition, both G.A.O. and the Office of Management and Budget (O.M.B.) have been expanding their role of carrying out evaluations for the Executive and for Congress. The amounts spent by both these key agencies were not included in the G.A.O. study. But by its own estimate, over the past five years about 30 percent of the professional staff of G.A.O. has become involved in conduct-

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ing evaluations of Federal programs under the authority granted by the Legislative Reorganization Act of 1970. In its 1974 survey, G.A.O. found 40 legislative acts—dealing with health, education, transportation, law enforcement, housing, the environment, economic opportunity, and agriculture—that called for evaluation. Six of these acts specifically authorized funds and mandated that a fixed percentage be set aside for evaluations. Another eight acts specified methods of data collection.

Finally, in all the large domestic agencies there are now centers for policy planning, management, and evaluation—some small, some large, some influential, some not, some closely tied to budgetary planning, some less closely tied. The resources that these centers command make their thinking and their needs a force in bureaucratic politics.

But along with the growth of research, which is often mandated by the legislation that institutes new social policies, there has grown a chronic sense of frustration, among both those who carry out the research and those who commission it. The feeling is that research does not really serve to guide policy, or is misused, or lies on a shelf unused. Has the contribution of research to action been oversold? One administrator reports, "We might as well be candid: Federal program evaluations so far have been largely ineffective." O.M.B. officials also report that evaluations, by and large, have not been timely, relevant, accurate, or accessible. Up to now, little systematic investigation has been conducted on the extent to which policy research enters the policy process. Recently, however, Nathan Caplan and his colleagues at the Institute for Social Research at the University of Michigan conducted an empirical study addressed to this very issue. They asked 204 persons in the executive branch who were in a position to make decisions whether and how they made use of social-science findings.

The respondents did believe in research: "One of the most striking findings is the very positive attitude of respondents toward the social sciences in general, and more specifically, to the use of social-science knowledge in the formation of policy." But Caplan did not think they used research much: 13 percent of the respondents could cite 5 to 10 instances of use with good supporting evidence; another 61 percent reported 2 to 4 instances of use with good documentation. On the other hand, 44 percent reported instances in which they purposely disregarded or rejected relevant social-science information in reaching policy decisions. Both "information" and "use" can mean different things: Information can be data-based

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("hard") or nonempirical ("soft"); its use can be conceptual or directed toward reaching a specific decision. Caplan concluded that there were 350 examples of the conceptual use of soft information. (In all, 575 examples of utilization were reported.) But it is difficult to determine how this use of information actually influenced the policy makers. For the most part, the respondents integrated the information with their own values and experiences "to form a frame of reference or perspective within which the social implications of alternative policies . . . are evaluated."

Caplan also found that social scientists and policy makers live in different worlds, characterized by conflicting values, rewards, and language. He concluded that lack of contact and lack of trust are the major explanations for variations in information use.

Yet the belief persists that rational intelligence *should* guide policy, at least to some extent. One approach to understanding the role of social science in decision making is to see how policy research is actually used: Perhaps our expectations and understanding of what it can do, and should be expected to do, have been misguided.

Proposals for reform

Most discussions of the utility of social science envision policy formation and research usage in a special way. There have been many proposals for improving the level of use of research findings, and such proposals suggest the nature of the prevailing conception.

1. *Improve the research according to accepted canons of scientific quality.* Unfortunately, many evaluations are simply not scientifically sound. Ilene N. Bernstein and Howard Freeman have reviewed all the evaluation studies receiving support from the Federal government in 1970 and having a research budget of over $10,000. The primary purpose of their study (published in 1975 by the Russell Sage Foundation as *Academic and Entrepreneurial Research*) was to measure the quality of evaluation. They defined quality in methodological terms—the adequacy of the sampling procedure, the data analysis, the statistical procedures, the design of the study, etc. The main finding was that fewer than 20 percent of the evaluation studies "consistently follow generally accepted procedures with respect to design, data collection, and data analysis." And what determines quality? It seems that academic research yields high-quality work, whereas entrepreneurial research, performed in the profit and nonprofit sector, does not. In academic

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research, funds are obtained for a relatively long period of time in the form of a grant and are awarded to academics who design and study in consultation with the staff administering the program.

Would the statistical and methodological purification of evaluation research make it more useful to policy makers? Probably not. Policy makers complain not only about the soundness of the research but also about its lack of timeliness. Improving the quality of research would only reduce its likelihood of arriving on time for a decision. The main problem, however, is out of the hands of researchers: Some programs are simply hard to evaluate, either because their objectives are not well specified or because their stipulated objectives are difficult to translate into research questions.

2. *Restrict the use of evaluation research to selected instances where the conditions necessary for effective research are available.* Political realities do not always permit establishing the conditions for good research design. It may not be possible to create control groups through random assignment, or to construct a sound study given the available time, resources, and managerial capability. It may not always be possible to devise indices that are reasonably representative of the issues at stake. Joseph Wholey has noted:

> The typical Federal program cannot be managed to achieve its stated objectives (as implied, for example, in the authorizing legislation) because: a) the program lacks specific, measurable objectives related to program goals, or b) the program lacks plausible, testable assumptions linking program activities to the achievement of program objectives, or c) managers lack the motivation, ability, or authority to manage.

Sheldon White and his colleagues made an extended examination of the possibilities for evaluating Federal preschool-education, day-care, family-intervention, health-care, housing, and income programs. It seems reasonably clear that virtually no program in these areas can be evaluated—at least not in the sense in which policy makers use the term "evaluation" and legislate for it. Interesting measures of some aspects of program performance do exist. But there do not seem to be measures definitive enough and credible enough to define the total value of programs. And if evaluations were made selectively, we would have very few evaluation studies.

3. *Require policy makers to define their objectives clearly.* The G.A.O. has developed a model statute, suggesting to Congress how objectives might be spelled out in reasonably precise terms. But how realistic is this? Legislation does not generally, or even occa-

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sionally, arise out of a conception of a single objective or purpose. Head Start, for example, appears to have been created for several quite different reasons: 1) to stimulate the development of poor children; 2) to stimulate community action; 3) to coordinate services for poor children and their families; and 4) to provide a basis for experiments in school reform. Is it politically expedient, or possible, to rank the multiple purposes involved in creating a program? Is the vagueness of the goals expressed in legislation the result of fuzzy thinking by politicians or rather an attempt to find a general formula acceptable to all parties to the agreement? Can the political process lead very often to direct statements of an intended goal? The stated purpose of the Elementary and Secondary Education Act of 1964, for example, was to improve the school achievement of disadvantaged children. The program has repeatedly been evaluated in terms of that goal through the use of achievement tests. But the legislation was also intended to allow for a Federal subsidy to education. If that was, in fact, the primary purpose of the legislation, then the mere transfer of funds has provided its own indication of success.

We have a political process precisely because people have multiple goals that somehow must be reconciled into a single course of governmental action. This resultant course of action may be called a "policy," but that term is misleading if it is regarded as implying one mind, one will, and one theory. Legislation requires ambiguity in the statement of goals so that coalitions can be formed in support of it, and each group can believe that the legislation serves its own special purposes. As Charles Schultze has explained, "The first rule of a successful political process is, 'don't force a specification of goals or ends' . . . necessary agreement on particular policies can often be secured among the individuals or groups who hold quite divergent ends." Insisting that the government's purposes be clear may reduce the scope of legislation and thus limit government involvement in social programs.

4. *Centralize decision making.* Finally, the argument is sometimes made that the decision-making process in government is too decentralized and too "noisy" to permit the effective utilization of policy research. This argument is directed not so much at the multiple purposes involved in legislation but at the multiple administrative and decision-making responsibilities distributed in the bureaucracy. Moreover, this argument for centralization is reinforced by the fact that those who commission studies are often no longer in government to accept what they requested, and those

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who are now empowered to act have formed a new agenda and are not interested in using the findings of studies they did not request.

This argument rests on the assumption that the dispersal of authority inhibits the capacity to act. In the halcyon days when the RAND Corporation enjoyed a close relationship with the Air Force, research produced by RAND was put to good use because the Air Force staff was empowered to act, and its short-term decisions were not subject to review. But such centralized decision-making power seldom prevails in the governmental bureaucracies concerned with social programs. (Indeed, the directness of the RAND/Air Force relationship has probably been idealized.)

However, the argument for centralization demands changing the political process to accommodate policy research—in this case, concentrating even more authority in the bureaucracy. Needless to say, this is a rather unlikely prospect.

The Westinghouse study

The four preceding proposals for bringing research and policy making together represent what might be called the problem-solving model. According to this model, the role of policy research is 1) to provide data to clarify a problem, 2) to conduct pilot projects or experiments to estimate whether proposed courses of action approach their goals, and 3) to evaluate implemented programs to determine if, and under what conditions, they are achieving their goals. The results of such policy research, transmitted to the policy maker or decision maker, permit changing or modifying targets or actions.

If this is why policy makers commission research, they will often be disappointed. But government continues to support policy research—and for good reasons.

Consider the Westinghouse evaluation of Head Start, conducted in 1968-1969. That study has been widely discussed, concerning both its scientific validity and its political effect. It has been argued, for example, that the evaluation was premature. Head Start was designed and implemented very quickly between November 1964 and the summer of 1965. The Westinghouse evaluation thus included third graders whose first summer of work occurred when start-up problems were severe. It is quite possible, then, that the entire sample was unrepresentative of what a fully-formed Head Start program might have achieved.

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A second argument was that the very design of the study made it inconclusive. There were several technical problems that might have suppressed evidence of the program's effectiveness.

A third criticism was that the study neglected important goals of Head Start. The Westinghouse evaluation addressed one goal that was important to some proponents of the program: the effects of the Head Start on school achievement. But many of those involved in writing the guidelines for the program were not persuaded that direct intervention was possible in childhood development and felt, nonetheless, that Head Start could act as a catalyst for such things as community action.

Given these uncertainties, the Westinghouse study should not have had a definitively negative effect on the program; in a sense, it did not, for Head Start lives today. But when we examine the scope of the program since the study was conducted, we can see that the evaluation did have one significant effect: It was an important factor, among others, leading to a *containment* of the program. Immediately after the Westinghouse evaluation and in a fairly explicit response to it, Head Start began and completed the phasing out of its summer programs. (The Westinghouse evaluation had found no effect on cognitive development from the summer programs, but marginal effects from full-year programs.) And for some years after the Westinghouse study, the budget allocated to Head Start remained steady at about $350 million a year; some high officials in the Department of Health, Education, and Welfare took to characterizing it as an "experimental" program. Some of the staying power of the program flowed from its sentimental appeal and its small but belligerent constituency, which sustained the program even during the latter years of the Nixon Administration, when a serious effort was made to dismantle almost all of the other poverty programs. Such support would normally have caused some enlargement of Head Start; the Westinghouse study was probably responsible for keeping program funding at about the same level.

Finally, the dramatic impact of the Westinghouse findings helped support the contention that "nothing works," which has led much of the policy community, over the years, to switch from a faith in service programs to a belief in a strategy of income redistribution. The Westinghouse evaluation cast a shadow not simply on Head Start, but on the understanding of the problem Head Start was intended to address. In a similar vein, David Cohen and Michael Garret have argued that the cumulative effect of a whole variety

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of studies may have been to alter the context in which policy is shaped:

> Taken together, the Coleman report, its progeny, and the stream of negative Title-I evaluations have gradually eroded the assumptions underlying compensatory policy. The changing climate of opinion has made it more difficult to maintain or expand compensatory projects and has weakened support for categorical educational programs.

Recent research has thus had a serious influence on the ideas and ideological commitments at the basis of educational policy in the United States. So although research may not influence any specific policy, it can help shape the climate of opinion and contribute to the interchange of ideas.

The power of knowledge

It is widely accepted that knowledge is power, and producing knowledge can play a role in the bid for power. A clear example of this political role of research occurred over the last few years in connection with the development of day-care legislation. It was uncertain which of several day-care bills would ultimately be administered by the bureaucracy. In the period before the passing of the first Mondale-Brademas bill, several rival agencies—the Office of Economic Opportunity, the Office of Child Development, the Department of Labor, and the Office of Education—were all actively sponsoring research on day care. There were, of course, the usual substantive reasons for commissioning such research—to provide information about demand, about the trade-offs between costs and quality, about the effects of child development, etc. But at the same time, those who dealt with the day-to-day management of contract research in Washington were aware that the rival agencies were "establishing a position" in day care, trying to build up information, staff competence, and visibility to deal with the upcoming legislation.

Research is thus commissioned not only out of the need for information but in the service of political positioning. Individuals, research offices, and agencies periodically find it necessary to make visible commitments toward significant issues and constituencies. Moreover, a symbolic gesture can substitute for definite, but risky, political action. Systematic research buys time for political leaders, while maintaining the commitment to action. Commissions, national surveys, task forces, experiments, and demonstrations all provide concrete and symbolic benefits to interested parties.

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The political use of research to postpone decisions and win political leverage need not detract from the substantive value of the work, however. In the majority of cases, cynicism is not warranted. Moreover, in the research-producing agencies, there are always a few individuals who are passionately committed to the value of either general or specific activities. So an agency can have a mixed commitment to research as a means to gain knowledge and as an end in itself.

The role and interests of researchers and research administrators must also be considered. It is in their interest to have a "portfolio" of grants and contracts that promise help with critical problems or groups, to enlarge their budget and staff, and to move research into positions of leverage in the bureaucracy—for example, into the areas of budgeting and planning.

It is important not to regard the instrumental use of research for career advancement as utterly cold-blooded calculation. Many administrators, in fact, have a more complete faith in the genuine value of research than most social scientists do. But good bureaucrats must inevitably be good survivors. They use their research activities for power and positioning because they have to: The rules of the game require it.

The demand for accountability

Evaluation research also serves now as a management device to insure that agencies do what is expected of them. Evaluation is thus linked to monitoring and auditing. The most prominent expression of this responsibility is in the current demand for "accountability." There is an increased unwillingness to take it for granted that benefits will follow from new legislation or that judgment and testimony should be exclusively limited to professionals and administrators. Ideally, the value of a program should be expressed in hard numbers.

Pressures for accountability have been building over the years at all levels of government; without doubt, such pressures are behind much of the recent Congressional interest in evaluations of social programs. Conservatives who are skeptical about a program may insist upon a legislative provision for evaluation, and liberals may accept the provision begrudgingly or willingly. Yet all the puzzles remain about what is involved in a cost-benefit analysis of housing, or of income distribution, or of community action. To be sure, government does have more pieces of fragmentary informa-

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tion today concerning the costs and benefits of the programs it manages than ever before.

Guerrilla groups functioning outside the Federal establishment have also made use of research. For example, Title-I funds of the 1964 Elementary and Secondary Education Act were expected to add to the resources available to schools serving the poor, so that the poor would receive more resources than the well-to-do. Local communities theoretically had to satisfy the condition of equal expenditure across income classes before funds could be allocated. In the early days of Title I, however, there was a widespread failure to satisfy this condition—and there were, as well, a number of cases in which a more serious misallocation of funds occurred. So a number of black-militant groups filed suits against local Title-I programs, using monitoring and evaluation information made available under the statutory requirements of the program.

Such outside policing has been stimulated by the frequent inclusion in legislation of a requirement that local, parent, or community advisory groups be associated with new social programs. There may also be requirements that information about the local programs be made available to such groups in a regular and convenient form. Such groups can and will demand the production of information relevant to their interests. Thus a different kind of demand for research in the interest of accountability arises.

At times there is a close relationship between the formal and the grass-roots auditors. Bureaucrats may feel that the case for reform is stronger when outside pressure groups present it. They may leak the information that supports reforms to such groups. Some observers have suggested that just such a cooperative strategy was followed by bureaucratic reformers and outside activists in the case of Title I.

Research as social reform

Research can also be used as a weapon in the efforts to reform government. In the early days of the poverty program, for example, the Federal administration tried to use research and evaluation as a means of wresting control away from local voluntary agencies that had preempted the social-welfare field. Similarly, David Tyack has argued in *The One Best System: A History of American Urban Education* (Cambridge, Harvard University Press, 1974) that there was a movement in the late 19th and early 20th centuries toward the professionalization of educational management, in order to

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shift control of the schools away from the local level. A coalition of the social elite and distinguished academics succeeded in bringing about this change. The ostensible basis for the reform was the desirability of making education and educational management more scientific. Superintendents were to become members of a "learned profession." Schooling was to be taken out of the realm of politics and placed on the higher plane of scientific administration, based on the best research evidence at hand:

> Nicholas Murray Butler could confidently assert, to the applause of the Merchant's Club of Chicago, that he should "as soon think of talking about the democratization of the treatment of appendicitis" as to speak of "the democratization of the schools." "The fundamental confusion is this: Democracy is a principle of government; the schools belong to the administration; and a democracy is as much entitled as a monarchy to have its business well done." A common school run for the people but not by the people. . . .

At the turn of the century, the reform movement tried to move away from a pluralistic system of local control. Now we are taking some pains to try to reinstitute it—the Democrats under slogans like "community action," the Republicans under revenue-sharing and slogans like "the new Federalism."

A further example of research as reform comes from the bureaucratic history behind the idea of the negative income tax (NIT) in the Office of Economic Opportunity. NIT was first introduced in government circles and most staunchly defended by a federal agency whose legislative mandate embraced the idea of "opportunity," but rejected the principle of transfers. The story of OEO's involvement with NIT suggests that it is often social scientists acting as reformers, rather than as social scientists per se, who contribute to the development of policy. Joseph Kershaw, the first director of OEO's Office of Research, Plans, Programs, and Evaluation, and latter assistant director of OEO, lucidly described the rationale underlying the activities of his office—and illustrated the political use of social theory:

> The Economic Opportunity Act was seen by its supporters . . . as being new and different . . . it was thought to be aimed at the correction of the causes of poverty rather than at the alleviation of symptoms. "Opportunity is our middle name," the poverty warriors were fond of saying. "We don't give handouts," Director Sargent Shriver said on many occasions. . . . Training programs, the teaching of adult literacy, family planning, and most things OEO does or did are directed at making it possible for people to pull themselves out of poverty, whereas most welfare expenditures can only be regarded as relief in one form or another. . . .

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But within OEO's Office of Research, Plans, Programs, and Evaluation were a group of economists acting, at least to some extent, as bureaucratic insurgents struggling against the agency that employed them. As economists, they accepted as self-evident the idea that the poor needed money as well as jobs, services, and community power. They believed that cash transfers in the form of a negative income tax, which would preserve work incentives and expand personal choice, would provide one of the decisive strategies in any war against poverty. And they pushed their idea by means of research, not only in OEO but also in H.E.W., the agency officially responsible for welfare policy.

What is the problem?

If policy formation is just problem solving, it should not involve the kinds of functions described above: containment, policing, power, and reform. But policy formation is more than merely problem solving, and social-science research enters into all stages of the process. Some deep differences between research and politics, however, seem to insure that as an individual achieves legitimacy in one area he loses it in the other. The research-policy alliance is thus quite painful to all participants, both researchers and policy makers.

The long-standing problem-solving model is in large part a myth: Research may solve problems, but it also has three other important functions: 1) identifying problems as a step toward putting issues on the agenda, 2) mobilizing government action, and 3) confronting and settling dilemmas and trade-offs.

According to the problem-solving model, policy making begins with articulated and self-evident problems, about which it is possible to hypothesize different courses of action and develop goals. But there is actually an earlier stage, often quite extended, during which various indications of stress emerge. It is not clear problems but diffuse worries that appear. Political pressure groups become unusually active, or their activities become more obvious. Formal and informal social indicators give signs of trends that are unfavorable or can be interpreted as unfavorable. There are indications that a problem exists, but as yet no one knows what it is. In the development of most governmental activities there is an important period during which troublesome elements have to be interpreted before even the statement of a problem is possible.

Problem setting is a form of pattern recognition; it involves find-

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ing or imposing an order or structure on incipient events. It is an integral part of the work of the scientist, perhaps the most crucial part, but it has traditionally been the least well codified aspect of research in the canons of methodology and "normal science." There is, in fact, no orderly and prescribed way of problem setting. In politics, the activity is no less fundamental and no more orderly. Different interest groups compete to impose a pattern on current events. Labor uses selected social indicators to suggest a crisis in worker satisfaction; business uses other indicators to proclaim a crisis in productivity. Rival groups thus implicitly bid for a mandate for action, selectively using data.

The search for "an issue" is the lifeblood of politics. It is increasingly the social scientist who locates and reports events, who probes for patterns, and who tries to confirm or deny patterns asserted by others. The social scientist is thus a significant participant in the business of defining and raising issues. Moreover, he has undeniable credentials and competence for the activity of problem setting.

The special relevance of the social-science researcher to the questions of politics rests on his understanding of generalized, average, modal human beings. No layman—no social worker, teacher, physician, or politician—has ever met an average child, a median unemployed factory worker in the Northeast, a modal big-city superintendent of schools. The layman generalizes from a limited series of personal encounters. To be sure, this mode of understanding should not be underestimated. Much can be learned from projecting from a few particulars to the general case; in politics much is done in this manner. But sometimes it is necessary to have aggregate estimates that go beyond the precision and the detail of private and casual encounters. The social-science researcher has tools—sampling and other techniques of statistical methodology—that permit detailed inferences concerning what the average child knows at the end of the first grade, what the distribution of disease by ethnic group is in the Southwest, what the recidivism rate is for juvenile reformatories, what the average voter thinks about fluoridation, etc. Public policy ministers to the generalized human being and so the social scientist is almost inevitably involved.

The activity of problem setting, in and of itself, is not deeply problematical. The only technical difficulty for social scientists is that they are curiously awkward in articulating their activities. In the political arena, however, problem setting is only one facet of the

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broader activity of issue setting, which raises a more fundamental concern: To assert an issue is to assert a mixture of facts and values. Contending political groups vie with one another not in the spirit of rival scientific theorists, but with the intention of mobilizing support leading to action. The next step in research for policy involves creating an effective coalition for action at the appropriate legislative or administrative level.

Policy choices

The problem-solving model presupposes that a policy issue is simultaneously and automatically made evident to all members of the policy community. Government is thus regarded as monolithic: The assumption is that many individuals in government often and easily think as one. Important questions of the sociology of knowledge and action aside, governments do not think, nor do individuals joined by an organizational structure think in unison. In a public bureaucracy, there is a community of actors, whose actions are to some extent interwoven by the system that provides for the division of labor, lines of responsibility, and the ultimate integration of their efforts. However, the bureaucratic integration of the actions of individuals is, at best, limited. Cooperative action is only grossly structured, and there is much room for individuals to work at cross-purposes, thus cancelling out one another's actions. Each actor faces his own set of decisions, defined by the position he occupies in the institutional structure. He chooses among courses of action, but his set of possible actions is different from that of others in different positions. Policy research can almost never dictate precisely what decision each actor is to make.

But policy research can lead individuals within the bureaucratic web to share a conception of the problems that are important, thus insuring that each will emphasize similar concerns when approaching his unique set of decisions. Patterns imposed on data can ultimately lead to evocative slogans—for example, "the need for a sense of community," "the weakening of the family," "equality of educational opportunity," "advocacy," "the need for income redistribution." Such slogans, and the metaphors that underlie them, can provide a basis for harmonious action. Individuals influenced by such conceptions will emphasize them within the sphere of their discretionary power—by favoring a service or research project that seems in line with the conception, adopting it as a criterion of quality for personnel selection, or allowing it to

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influence budget allocations. Even though there is no overt plan of cooperation, individuals distributed throughout the bureaucracy can nevertheless transform a way of looking at a problem into a force determining the actions of the system. Individual actions and accommodations are then reinforced by more formal but secondary institutional organizations—committees, interagency task forces, societies, coordinating newsletters.

Research and theory can also help to provide an ideology that helps create coalitions. In politics, of course, it is hardly news that ideology springs from assertions about the state of society—assertions that rest on the authority of the social scientist, who is an expert at viewing large things like a society, but that seem at times to have been selected, exaggerated, and distorted so much that the social scientist will wonder whether they exceed and even jeopardize his authority. Contending political claimants may use social scientists in much the same way that contending court claimants often use psychiatrists: Each side, pro and con, has its experts who speak for it. Thus the seemingly paradoxical situation arises in which objective scientific evidence is used to support different, and at times radically opposed, courses of political action. Science seems to speak out of both sides of its mouth about the course that policy should take. Perhaps the answer to this apparent paradox is that political choices can be brought to light but never resolved by scientific information.

Managing dilemmas and trade-offs

Finally, the problem-solving model overlooks the essential presence of dilemmas and trade-offs. Charles De Gaulle reportedly said, "I have lived a long life and I have never seen a single problem solved." Larger policy questions involve dilemmas and trade-offs virtually by definition: If a problem is clear and uncontested, it does not ordinarily emerge at high levels of political debate. It is merely a technical problem. Its solution will be debated and resolved through technical and bureaucratic institutions, away from the central policy-making arenas of government.

Genuine social-policy dilemmas, on the other hand, can arise (for example) from the effort to preserve work incentives and simultaneously to provide adequate income support for those who cannot be gainfully employed; or from the effort to design programs that will reach only those for whom they were intended, since administrative screening devices that focus on weeding out the in-

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eligible also reduce the likelihood of reaching the eligible. Dilemmas can also arise in education from the tension between the notion of equality of educational opportunity on the one hand, and pluralism and cultural democracy on the other. In the recurrent efforts to establish Federal day-care standards that benefit both the mother and the child, minimal standards and low expenditures are essential to lower welfare costs by encouraging women to work, but high standards—according to much professional testimony—are necessary for the benefit of children.

Genuine social-policy dilemmas such as these involve a conflict of values—two ideals directing action in diametrically opposite directions. In practice, we can only act along a continuum of trade-offs, where more of one ideal is purchased at the expense of less of the other. The manifold dilemmas that exist in the political arena are not the kinds of problems that are envisaged in the problem-solving model, and they cannot be resolved in its terms. What research can do is articulate and clarify the range of practical choices and elucidate in concrete terms the practical consequences of each choice. But it cannot arbitrate the underlying value choices and thereby solve the problems.

Research is, or is supposed to be, value-free. Yet research that is brought into policy decisions is used to negotiate for the supremacy of some particular value position. The researcher may be chagrined by this political use of his work, in which case he will stoutly assert the irrelevance of his work to policy; or he may cooperate in the political exploitation of his findings, in which case he runs a real risk of having himself or his work discounted by the scientific community that provides the basis for his credibility.

But in another sense science is never value-free. Scientists function in a community that stresses the observance of rules and does not transmit values or adjudicate among competing values. Within the community, members engage in common routines of analytic operations—pattern recognition, induction, inference—which are largely value-neutral. (Or, at least, individual values are "washed out" for the most part in the process of trading back and forth.) But the community is composed of individuals, and the individual's work is always an expression of his personal values—not only through his choice of area and problem but through the way he imposes patterns on phenomena and assigns meaning to relationships. Part of the work of the scientific community, however, is to guard against this, to "keep him honest," by insisting that findings offered by an individual with one bias be confirmed by

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the observations of individuals with other biases. This is ideally how value-neutral knowledge should be produced out of the collective work of the community. Reality falls far short of this ideal, of course.

Politics, by contrast, depends upon the identification and expression of contending values. The basic intent of political action is thus not to "wash out" values but to arrive at courses of action that satisfy as much as possible all the contending interests. But the proposals for reforming the research-policy alliance that are based on the problem-solving model would generally have the effect of taking research farther away from policy making, or else changing the basic nature of political processes.

The problem-solving myth

Policy research is increasingly receiving support, both in resources and from institutions, because it plays a genuine role in the American political process. But the policy-research alliance is an uneasy marriage, with dilemmas for both sides. These dilemmas go rather deep; participation in the alliance involves potential erosions of responsibility and credibility for both the researcher and the policy maker.

Science seeks to establish patterns of experience that all may share. They are value-neutral, in the sense that they are deliberately designed to filter out the values of individual participants and arrive at the "unbiased truth": Findings must be accepted by individuals whether they find them palatable or unpalatable. The scientist should be restrained, dispassionate, conservative, and willing to suspend belief, pending more evidence.

Politics is quite different from science: The intent is to find one purpose, or course of action, acceptable to individuals espousing diverse purposes, values, and courses of action. Politics is value-expressive; facts are subordinate to and sustaining of values, and only contribute to the delineation of an issue. The politician seeks to maximize the satisfaction of his interests: He must be bold, persistent, opportunistic, and capable of mobilizing and sustaining belief and commitment.

It is extremely difficult for an individual to retain his credibility in these two very different areas. The scientist who is too action-oriented loses his credibility in the same way that the politician who is too theory-oriented loses his. But the basic problem is not the ability or inability of an individual to wear two hats, but rather

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the incompatibility of science and politics: One trades in facts and the other in values.

Researchers are now regularly asked to evaluate programs in education, housing, law enforcement, community development, etc. They are never concretely told what values or value-derived goals to pursue—because, virtually by definition, the political body setting forth such programs cannot make up its own mind, much less specify a goal with precision. So as the researcher pursues his supposedly technical function, he must make decisions about what constitutes good child development, good education, good housing, a good family, a good community. The political community has effectively passed on to the scientific community the problem of achieving a consensus regarding social values and goals. But this transfer of authority exceeds the professional competence of the researcher; by usurping some of the genuine political responsibility of the policy maker, it is improper as well.

Can research help policy? It can. Sometimes findings are so decisive that a new understanding of a problem or a new approach to dealing with it emerges and begins to affect the public, the politicians, and the policy makers. But more often, research affects policy in ways that are rather far removed from this problem-solving model—and indeed, are not even recognized by researchers or policy makers. But even though policy makers will be dissatisfied with the researchers they commission, and researchers will be unhappy over the inability of policy makers to provide them with the kind of tasks that fulfill the canons of their profession, policy research will probably grow and expand. For whether it solves problems or not, research helps those involved in the making of policy to decide what the problems are. Moreover, policy research is by now incorporated as a full partner in the art of politics.

MARTIN DIAMOND, 1919-1977

We are grieved at the sudden death, on July 22, of our dear friend and valued collaborator, Professor Martin Diamond.

—The Editors

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